FINAL REPORT
OF THE AD HOC
FEDERAL-PROVINCIAL-TERRITORIAL
WORKING GROUP REVIEWING

Spousal Abuse Policies and Legislation

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Final Report
# of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation

Prepared for
Federal-Provincial-Territorial Ministers Responsible for Justice

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(Minister of Justice and Attorney General of Canada)

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EXECUTIVE SUMMARY

In September 2000, the federal, provincial and territorial (FPT) Ministers responsible for Justice directed the establishment of an ad hoc FPT working group to review the implementation and status of the mandatory or pro-charging and prosecutorial policies related to spousal abuse as well as several proposed legislative reforms. This working group was directed to report back to Ministers on the results of this review within one year.

The Ad Hoc FPT Working Group Reviewing Spousal Abuse Policies and Legislation was established in November 2000 and is co-chaired by the Department of Justice Canada and the Nova Scotia Department of Justice. The Working Group submitted its first report to FPT Ministers at their September 11, 2001, meeting. This first report included a final report on the review of proposed *Criminal Code* reforms and an interim report on the review of the spousal abuse charging and prosecutorial policies.

In response to this first report, Ministers approved the Working Group's unanimous recommendation to amend section 127 of the *Criminal Code* (Disobeying Order of Court) to make it a hybrid offence, carrying a maximum penalty of two years when proceeded by indictment. Ministers also extended the mandate of the Working Group to enable it to complete its review of the spousal abuse policies.

The pro-charging and pro-prosecution policies for spousal abuse are, in fact, the applicable standards for all criminal conduct. Their specific application to spousal abuse cases underscores the need to make the critical distinction between the criminal justice system's treatment of spousal abuse as a "criminal matter" and its historical treatment of spousal abuse as a "private matter." Although the pro-charging and prosecution policies have been in place at the federal, provincial and territorial levels since the mid-1980s, the Working Group's review of the policies represents the first co-ordinated review conducted across Canada.

The Working Group conducted an extensive review of research, including statistical data. In addition it endeavoured to obtain the input of frontline criminal justice personnel to assess their perspectives on how the policies are working, as well as to identify any inconsistencies between the policies as written and adopted and their day-to-day operation. The Working Group also considered how the spousal abuse policies reflected and responded to the diversity of spousal abuse victims.

The Report provides an overview of the nature and incidence of spousal abuse in Canada today. Although both women and men experience spousal abuse, the nature and severity of the spousal violence suffered by women is much worse, with the result that spousal abuse remains predominantly an issue of male violence against women.

The Report traces the adoption of the spousal abuse policies in Canada, commencing in 1981. It reviews the experiences with the policies by police, Crown prosecutors and victims. The Working Group has identified three key objectives of any criminal justice system response to spousal abuse: criminalizing spousal abuse; promoting the safety and security of the victim; and maintaining confidence in the administration of justice.

With respect to the charging policy, the Working Group concludes that it has contributed significantly to the strengthening of the criminal justice system response to spousal abuse. Despite some unintended negative consequences of the adoption of the pro-charging policy, the majority of victims strongly support the policy. The policy ensures a strong and consistent first line of response by the criminal justice system that helps to ensure the safety and security of spousal abuse victims. The Working Group recommends its continued retention.

Regarding the prosecution policy, the Working Group notes that its implementation has met with mixed results. However, properly interpreted and applied, the prosecution policy has had and can continue to have a positive impact in strengthening the criminal justice system's response to spousal abuse. The Working Group recommends its continued retention.

The Working Group also reviewed the many innovative measures that have been implemented by federal, provincial and territorial governments to support and enhance the effectiveness of the spousal abuse policies in particular, and to strengthen the criminal justice system's response to spousal abuse more generally. Finally, the Working Group acknowledged that certain jurisdictions (federal, provincial and territorial governments) have policies and strategies that address not only spousal, but also family, violence. In this regard, the Working Group recognized that in many instances the measures related to spousal violence were part of a broader strategy to address family violence.

The Working Group reviewed the many innovative structures and models, including dedicated domestic violence courts, civil legislation to better protect victims against domestic violence, and intersectoral co-ordinating strategies and initiatives throughout the country. The Working Group also surveyed the availability of support programs including victim services; shelters and non-residential support programs for abused women and their children; interventions for children who are exposed to spousal abuse; abusive partner intervention programs; the development of risk assessment tools and monitoring/tracking systems; and training.

The Working Group concludes that these innovative measures and approaches have played a key role in supporting the implementation of the spousal abuse policies. They have also strengthened the criminal justice system's response to spousal abuse by providing new ways and tools to ensure that the system is sensitive to the unique realities of spousal abuse. Accordingly, the Working Group recommends continued support for the development of new and innovative justice system responses to better support and safeguard the victim throughout the criminal justice process, to rehabilitate the offender, and to ensure a strong, co-ordinated multisectoral response to spousal abuse. Ongoing training for criminal justice personnel and evaluation of new measures are critical to ensure strong and effective criminal justice system responses to spousal abuse.

Finally, the Working Group also acknowledges that many gaps remain in our understanding of the causes of spousal abuse: the impact of the justice system response to this form of violence; and the effectiveness of the various programs and services for victims and offenders. The Working Group recommends that jurisdictions support research to address these information gaps in order to provide a foundation for building a more effective response to domestic violence. A list of the recommendations is provided in section V of this Report.

SECTION I: REVIEW OF SPOUSAL ABUSE POLICIES

1) BACKGROUND

Spousal abuse is a serious and complex issue with multiple dimensions and causes. It manifests itself in all societies[1] and across all social classes.[2] It goes by different names, including wife assault, wife abuse, violence against women in relationships, spousal abuse and partner abuse; in some societies it remains nameless, reflecting an unwillingness to formally and publicly recognize something that is perceived to be a "private" matter.[3]

Whatever it is called, violence against one's current or former spouse, common-law or other intimate partner is not a new phenomenon. Yet, the development of our awareness and understanding of spousal abuse, including its incidence and indicators of violence, as well as its impact on victims, is relatively new and growing. Similarly, the development and implementation of new specific criminal justice system responses to spousal abuse, an issue that had historically been invisible to the system, has been fairly recent.

From 1983 to 1986, federal and provincial Attorneys General and Solicitors General adopted policy directives that required police and Crown prosecutors to charge and prosecute all incidents of spousal abuse where there were reasonable and probable grounds to believe that an offence had been committed. Since that time, other measures have been taken to complement and strengthen the implementation of these policies across the country. These measures include the establishment of dedicated domestic violence courts, services and treatment programs, as well as the enactment of civil legislation for victims of domestic violence. In addition to such measures, numerous inquiries, task force reports and studies have been undertaken to more closely examine the issue of spousal violence in particular cases.

The effectiveness of the criminal justice system's response to spousal abuse is an issue that has often come before federal, provincial and territorial (FPT) Ministers responsible for Justice for their consideration. Such discussions have often focused on proposed legislative reforms directed at specific forms of spousal abuse. However, at the September 2000 meeting of FPT Ministers, the discussion included a broader consideration of the impact of the charging and prosecutorial policies relating to spousal abuse that have been adopted since 1983. These policies are often described as "pro-charging" and "pro-prosecution" policies; nonetheless, they are, in fact, the applicable standards for all criminal conduct. Their specific application to spousal abuse cases played a pivotal role in helping to make a critical distinction between the criminal justice system's treatment of spousal abuse as a "criminal matter" and its historical treatment of spousal abuse as a "private matter." Although the pro-charging and prosecution policies for spousal abuse have been in place in all provinces and territories in Canada since the mid-1980s, the Working Group's review of the policies represents the first co-ordinated review conducted at the federal, provincial and territorial level.

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[1] *1996 Report of the Special Rapporteur on Violence Against Women*, submitted to the United Nations' Commission on Human Rights (E/CN.4/1996/53), para. 22. See also Statistics Canada (Canadian Centre for Justice Statistics), *Family Violence in Canada: A Statistical Profile 1999*, at 17-19 which provides a comparative summary of surveys on spousal violence against women in Canada, the United States, Australia, England and Wales, Nicaragua, Mexico, Chile, Columbia, Korea, Cambodia, Malaysia, and Papua New Guinea.

[2] Statistics Canada (Canadian Centre for Justice Statistics), *Family Violence in Canada: A Statistical Profile 2000* at 16. See also MacLeod, Linda, *Battered But Not Beaten...Preventing Wife Battering in Canada* (Canadian Advisory Council on the Status of Women, June 1987) at 21; and MacLeod, Linda, *Wife Battering in Canada: The Vicious Circle* (Canadian Advisory Council on the Status of Women, January 1980) at 14-16.

[3] *1996 Report of the Special Rapporteur on Violence Against Women, supra* note 1, paras. 26, 29-31.

Accordingly, Ministers approved of the establishment of an ad hoc FPT working group to review the implementation and status of the spousal abuse policies and to report back to Ministers on the results of this review within one year. Ministers also directed an FPT review of proposals, made by Alberta and Ontario, to amend the *Criminal Code* relating to spousal abuse. This review was subsequently assigned to the proposed ad hoc working group.

The Ad Hoc FPT Working Group Reviewing Spousal Abuse Policies and Legislation was established in November 2000. The Department of Justice Canada and the Nova Scotia Department of Justice co-chair the Working Group. A copy of the Working Group's mandate is appended hereto in section VI of this Report.

The Working Group comprises at least one representative from each jurisdiction (federal, provincial and territorial governments acting within their purviews), with membership representing police, Crown Prosecutors, correctional services, victims' services, policy and research. Four sub-committees were established to examine legislation, policies, support services, and structures and models.

The Working Group submitted its first report to FPT Ministers at their September 2001 meeting. This report included a final report on the review of proposed *Criminal Code* reforms and an interim report on the review of the spousal abuse charging and prosecutorial policies.

With respect to the legislative review, FPT Ministers approved the Working Group's unanimous recommendation to amend section 127 of the *Criminal Code* (Disobeying Order of Court) to make it a hybrid offence carrying a maximum penalty of two years when proceeded by indictment. The federal Minister of Justice has since included this proposed amendment in Bill C-20, *An Act to Amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act* (First reading December 5, 2002). The majority of FPT Ministers also accepted the recommendation of the majority of the Working Group against enacting the other four proposed *Criminal Code* reforms. Lastly, Ministers approved of the extension of the mandate of the Working Group in recognition of the fact that the Working Group had been asked to complete the review of proposed legislative reform on an expedited basis.

Contents of Report

This Report provides an overview of the nature and incidence of spousal abuse in Canada today, summarizes the background leading up to the adoption of the pro-charging and prosecution policies, and reviews the research findings relating to the implementation and effect of the policies in Canada. This section includes a brief overview of the current trend toward the use of alternative justice processes. The section concludes with recommendations, including recommendations on the use of alternative justice processes in spousal abuse cases. The Report then provides an overview of and recommendations on related structures and models, as well as support programs. A compendium summarizing all of these supporting measures is provided in section VI of this Report, and a list of the Working Group's recommendations is contained in section V.

2) THE NATURE AND INCIDENCE OF SPOUSAL ABUSE IN CANADA

There are numerous indicia of the serious nature of spousal abuse, not the least of which are its physical and emotional impacts on victims and their children. Other indicia include the incidence of spousal violence, its nature, its victims and its consequences for Canadian society. Statistical data and supporting research offer invaluable insight into all of these factors. (Except where otherwise cited, statistics noted herein are taken from Statistics Canada's *Family Violence in Canada: A Statistical Profile 2002*.)

The availability of data on spousal abuse in Canada is still a fairly recent phenomenon. In 1980, the Canadian Advisory Council on the Status of Women provided the first national estimate of the incidence of spousal abuse in Canada: "Every year, 1 in 10 Canadian women who are married or in a relationship with a live-in lover are battered."[4] The author of this 1980 study subsequently described the reaction to the revelation of this estimate as one that shocked policy-makers and the public.[5]

Since that time, we have had the benefit of additional and more comprehensive data, the most significant of which have been Statistics Canada's *Uniform Crime Reporting Survey* (UCR2),[6] the 1999 *General Social Survey on Victimization* (GSS), the 1993 *Violence Against Women Survey* and the *Homicide Survey*.[7] Both victimization and police-reported incident-based surveys have advantages and limitations. However, victimization surveys are considered more complete since they interview samples of the population directly about their experiences and do not depend on victims' willingness to report crimes to police, as is the case with the UCR2 survey.

Who are the victims of spousal abuse?

Both women and men experience spousal abuse. GSS data from 1999 indicate that eight percent of women (690,000) and seven percent of men (549,000) reported experiencing at least one incident of violence by a current or previous partner during the preceding five-year period.

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[4] *Wife Battering in Canada: The Vicious Circle*, *supra* note 2 at 21.

[5] *Battered But Not Beaten...Preventing Wife Battering in* Canada, *supra* note 2 at 6.

[6] The UCR2 is a police-reported incident-based crime statistics survey that provides information regarding the characteristics of the accused, the victim and the incident itself. In 2000, the UCR2 was based on data provided by 166 police agencies in 9 provinces, representing 53 percent of the national volume of reported crime. A subset, 106 police agencies, has been participating in this survey consistently since 1995 providing an indication of trends over time: Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 2 at 44. Except as otherwise cited, statistics noted in the text are taken from Statistics Canada's *Family Violence in Canada: A Statistical Profile 2002*.

[7] The GSS is conducted by Statistics Canada on a cyclical basis. The last victimization component dates back to 1999. The GSS measures eight types of crime, using *Criminal Code* definitions, as disclosed and experienced by individual victims 15 years of age or older. The 1999 sampling size was 25,876. A specialized survey using a similar approach was also conducted in 1993 (the Violence Against Women Survey): See Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 6 (2002) at 5.

Overall, this amounts to 7 percent of adult Canadians.[8] This rate increased to 20 percent for Aboriginal peoples (25 percent for women and 13 percent for men).[9]

UCR2 data for 2000 indicate that spousal abuse victims represent 1 in 5 (18 percent) of *all* violent offence victims (p. 6). In 2000, women represented 85 percent of victims who reported spousal abuse to police while men represented approximately 15 percent of victims. This proportion has remained relatively stable since 1995, although the number of spousal assault cases reported to police increased for both women and men over this time period (pp. 6-8). The number of criminal harassment cases involving intimate partners has also increased since 1995. Discrepancies between victim survey and police data can be explained by the fact that women report more serious violence with more severe consequences and are more likely than men to report spousal violence to the police (37 percent).

What are the risk indicators of spousal violence?

Data from the 1999 GSS indicate that there is a greater risk of experiencing spousal violence for the following:

- younger Canadians (15-24), particularly young women;[10]
- persons living in common-law relationships;
- persons whose partners abuse alcohol (indicated by periodic heavy drinking);
- persons living with very controlling and emotionally abusive partners;
- Aboriginal women; and
- women undergoing a separation.[11]

Due to the limitations of surveys that are conducted only in English and French, like the GSS and *Violence Against Women Survey*, the experience of linguistic minorities and recent immigrants or refugees is not as fully known.

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[8] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 2 at 11.

[9] Statistics Canada (Canadian Centre for Justice Statistics), *Family Violence in Canada: A Statistical Profile 2001* at 28.

[10] Women who are younger or at childbearing age, are at a higher risk of violence during pregnancy: Andrea Levett and Holly Johnson, "A Statistical Comparison of Women's Experiences of Violence in Urban and Rural Areas," Department of Justice Canada, Technical Report 1998-17e at 16.

[11] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 2 at 15-16. Other research studies also report a high correlation between spousal violence and stalking (criminal harassment): P. Tjaden and N. Thoennes, "Prevalence and consequences of male-to-female and female-to-male partner violence as measured by the national Violence Against Women Survey" (2000) Violence Against Women 142-161; and J. MacFarlane, *et al.* "Stalking and intimate partner femicide" (1999) Homicide Studies 300-316.

What type of violence is experienced?

Although the overall rates of experiencing spousal abuse for women and men were similar, the 1999 GSS indicated that the nature and severity of violence suffered by each were different. For example, women were more likely than men to experience more severe forms of violence: they were more than twice as likely to report being beaten (25 percent versus 10 percent), 5 times more likely to be choked (20 percent versus 4 percent) and twice as likely to have a gun or knife used against them (13 percent versus 7 percent).[12]

Intimate Partner Homicide

In the ten-year period of 1991-2000, homicides involving intimate partners accounted for 27 percent of all homicides. During that period, intimate partners killed 1,056 persons.

- Of the 846 women killed (80 percent of the total), 481 were killed by a current spouse, 185 by an estranged spouse, 177 by a boyfriend and 3 by a same-sex partner.
- Of the 210 men killed (20 percent of the total), 161 were killed by a current spouse, 18 by an estranged spouse, 23 by a girlfriend and 8 by a same-sex partner.

In over half of all spousal homicide cases (58 percent), police noted a history of domestic violence in the family.[13]

Data from the *Homicide Survey* for 1991-99 indicate that the rates of spousal homicide for Aboriginal women were more than eight times greater than for non-Aboriginal women and eighteen times greater for Aboriginal men than for non-Aboriginal men. The spousal homicide rates were higher for Aboriginal persons in common-law relationships than for Aboriginal persons in legal marriages: almost eight times higher for Aboriginal women and six times higher for Aboriginal men.[14]

In general, the spousal homicide rate declined between 1974 and 2001: by 62 percent for women from 16.5 to 6.3 women per million couples; and by more than 50 percent for men from 4.4 to 2.0 men per million couples (p. 9). Declines have been shown for most age groups, most regions of the country and among the higher risk relationship types (separated and common-law relationships). Following fairly steady declines between 1991 and 2000, in 2001 there was a substantial increase in the number of spousal homicides against women: 69 compared to 52 in 2000. There was no change in the number of wives killing husbands (16 in both years). Despite this increase, the number of spousal homicides in 2001 was comparable to the average number over the period of 1991-2000.[15]

This overall decline in the rate of spousal homicides in Canada may be due to changing intimate relationships (for example, the increased average age of first marriage for men and women, and delayed child rearing) and increasing gender equality (for example, rising labour force participation among women), as well as the many different measures undertaken by governments and community groups to address family violence over the past 20 years. These measures include the implementation of spousal abuse charging and prosecution policies in all Canadian jurisdictions, increasing the availability and use of services for battered women, increasing the availability of treatment programs for abusive partners, specialized domestic violence courts and various legislative changes including the introduction of criminal harassment legislation (pp. 12-14).

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[12] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 2 at 12.

[13] Statistics Canada (Canadian Centre for Justice Statistics), *Juristat: National Trends in Intimate Partner Homicides, 1974-2000, (Vol. 22, No. 5)* at 5.

Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 9 at 31.

[15] M. Dauvergne, *Juristat: Homicide in Canada, 2001 (Vol. 22, No. 7)* (2002) at 12. Ontario reported the greatest increase—16 more in 2001 than in 2000.

From 1974-2000, firearms were the most frequently used weapons in spousal homicides. Women were more likely to be killed with firearms (40 percent versus 26 percent) and men were more likely to be killed with knives or other sharp objects (58 percent versus 23 percent). Overall, however, there has been a statistically significant decline in the proportion of spousal homicides involving firearms from 1974-2000 (a decrease of 77 percent for female victims and 80 percent for male victims) (p. 11).

When does spousal abuse occur?

UCR2 data for 2000 indicated that, for approximately two-thirds of women and men, the abuse was inflicted by current spouses (p. 6). Although it is a common assumption that separation and divorce end the risk of spousal violence, 39 percent of female victims and 32 percent of male victims in the 1999 GSS reported the occurrence of violence after separation.[16] Of those who reported post-separation violence, 24 percent stated that the assaults became more severe and 39 percent reported that the violence only began after separation.[17] Female victims (59 percent) were three times more likely than male victims (20 percent) to report being physically injured during violent encounters with their former partners.[18] As well, separated women were at greatest risk of being murdered: rates of spousal homicide were nine times higher for separated women (38.7 per million separated women) compared to those who were legally married (4.5 per million married women) or living common-law (26.4 million).[19]

What is the impact of spousal violence on victims?

The impact of violence on the lives of spousal abuse victims is significant: 28 percent of spousal abuse victims reported in the 1999 GSS that they had sustained a physical or mental condition or problem that affected their daily activities (versus 21 percent of the population who were not victims) (p. 15).

The 1999 GSS indicated that women were three times more likely than men to experience physical injury as a result of the violence (40 percent of women versus 13 percent of men) and five times more likely than men to require medical attention as a result of the violence (15 percent of women versus 3 percent of men) (p. 15).

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[16] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 9 at 31.

[17] *Ibid.* at 31.

[18] *Ibid.* at 32 and 40.

[19] Statistics Canada (Canadian Centre for Justice Statistics), *Juristat: Spousal Violence After Marital Separation*, (Vol. 21, no. 7) at 7.

Aboriginal spousal abuse victims reported experiencing more severe and potentially life-threatening violence by a current or former partner: 48 percent of Aboriginal spousal abuse victims versus 31 percent of non-Aboriginal victims.[20]

In addition to the physical impact of spousal violence on victims, the 1999 GSS indicated that the most commonly reported emotional consequence for both women and men was being upset, confused and frustrated. While 22 percent of male victims stated that the violence had not greatly affected them, only 5 percent of women reported little impact. Women were much more fearful than men as a result of the violence (34 percent of women versus 3 percent of men) and were more likely to state that they feared for the safety of their children (14 percent versus 2 percent). Women were also more likely than men to experience sleeping problems (14 percent versus 4 percent), depression or anxiety attacks (21 percent versus 10 percent) and reduced self-esteem (23 percent versus 6 percent) (p. 15). Female spousal abuse victims also reported twice as much use of medications and drugs as male victims (p. 16).

What is the impact of spousal violence on children?

The 1999 GSS indicated that approximately half a million children, representing 37 percent of all households with spousal violence, were reported to have heard or witnessed a parent being assaulted in the preceding five-year period.[21] This figure rose to 47 percent for Aboriginal spousal abuse victims.[22] Children were more likely to witness violence against their mothers (70 percent) than against their fathers (30 percent).[23] Further, children were more likely to witness severe acts of violence against their mothers: 53 percent of women and 12 percent of men feared for their lives in these incidents.[24] The 1999 GSS also indicated that in 10 percent of assaults against women and in 4 percent of assaults against men, a child under the age of 15 years was harmed or threatened.[25]

Research indicates that children who are exposed to spousal violence may display signs of emotional, social, cognitive, physical and behavioural problems including lower levels of social competence; higher rates of depression, worry, frustration and anxiety; increased likelihood of developing stress-related disorders; decreased levels of empathy; developmental regression; complaints of physical ailments; and aggressive behaviour.[26] There is also evidence to indicate that children who witness spousal violence are more likely to become a part of a generational cycle of violence: boys who witness the abuse of their mothers are more likely to subsequently become abusive in their own relationships; girls who witness the abuse of their mother are more likely to subsequently enter into abusive relationships.[27]

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[20] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 9 at 29.

[21] Statistics Canada (Canadian Centre for Justice Statistics), *Juristat: Children Witnessing Family Violence*, (Vol. 21, no. 6) at 3.

[22] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 9 at 37.

[23] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 21 at 3.

[24] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 2 at 17.

[25] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 21 at 4.

[26] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 21 at 2.

[27] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 21 at 7.

What are the costs of spousal abuse to Canadian society?

Spousal violence places a significant burden on Canadian society with respect to supplying and maintaining medical services, social services (including counselling and emergency shelter services) and criminal justice system services. GSS data from 1999 indicated the following impacts as a direct result of the violence:

- *Time off from daily activities*: 22 percent of all spousal violence victims (33 percent of female victims and 10 percent of male victims) had to take time off from their daily activities as a result of the violence (p. 16).
- *Medical services*: 119,000 spousal abuse victims required medical attention. Women were five times more likely to require medical attention than men (15 percent of female victims versus 3 percent of male victims) and to require hospitalization (11 percent of female victims versus 2 percent of male victims) (p.15).
- *Social services*: 34 percent of all victims (48 percent of women and 17 percent of men) used a social service (pp. 16-17 and 25). Eleven percent of female victims used transition homes and approximately 2 percent of male victims used men's centres or support groups (p. 17).
- *Criminal justice system services*: 37 percent of female spousal abuse victims and 15 percent of male spousal abuse victims reported incidents of violence to police during the preceding five-year period (p. 18). UCR2 data from 2000 indicate that police laid charges in 82 percent of spousal violence incidents.[28]

In 1995, a study of selected economic costs of three forms of violence—sexual assault, woman abuse in intimate partnerships and incest or child sexual abuse—estimated the partial annual costs of violence against women in four policy areas as follows.

Social services/education	$2,368,924,297
Criminal Justice	$871,908,583
Labour/employment	$576,764,400
Health/medical	$408,357,042
TOTAL:	$4,225,954,322

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[28] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 2 at 24.

The authors of this study estimated that 87.5 percent of these costs were borne by the state, 11.5 percent by the individual and 0.9 percent by third parties.[29]

3) CRIMINAL JUSTICE SYSTEM'S RESPONSE TO SPOUSAL ABUSE

The late 1970s and early 1980s saw the emergence of a growing awareness of and interest in the criminal justice system's response to spousal assault cases, brought about in large part by the efforts of women's groups and grassroots movements.[30]

This, in turn, led to the development and piloting of some new approaches.[31] For example, London, Ontario, became a leader in the development and provision of services to battered women with the establishment of the London Co-ordinating Committee on Family Violence in 1980.[32] The committee's 1981 report included a recommendation that police be directed to lay charges in all cases of wife assault. As a result, in May 1981, the London Police Department became the first Canadian police agency to implement a charging policy for spousal assault.[33]

In May 1982, the House of Commons' Standing Committee on Health, Welfare and Social Affairs tabled its report, *Report on Violence in the Family—Wife Battering*. In it, the committee noted that police training (at that time) generally instructed against the arrest of a batterer unless he was actually found hitting the victim or unless the victim had suffered injuries that were "severe enough to require a certain number of stitches."[34]

On July 8, 1982, the House of Commons unanimously adopted a motion that "Parliament encourage all Canadian police forces to establish a practice of having the police regularly lay charges in instances of wife beating, as they are inclined to do with any other case of common assault."[35] It should be noted, however, that this motion was initially greeted with "laughter and jeers."[36] On July 15, 1982, the Solicitor General of Canada wrote a letter to the Canadian

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[29] L. Greaves, O. Hankivsky, and J. Kingston-Riechers, *Selected Estimates of the Costs of Violence Against Women* (London, Ontario: Centre for Research on Violence Against Women and Children, 1995) at 2.

[30] Department of Justice Canada (6 June 1989) "Toward a More Effective Criminal Justice Response to Wife Assault: Exploring the Limits and Potential of Effective Intervention," by Linda MacLeod and Cheryl Picard at 1; and Dianne L. Martin, "Retribution Revisited: A Reconsideration of Feminist Criminal Law Reform Strategies," (1998), Osgoode Hall Law Journal 151 at 167-8.

[31] Jane Ursel, "Report on Domestic Violence Policies and Their Impact on Aboriginal People," submitted to the Aboriginal Justice Implementation Commission, (21 February 2001) at 1 and 3.

[32] London Family Court Clinic Inc., *Wife Assault as a Crime: The Perspectives of Victims and Police Officers on a Charging Policy in London, Ontario From 1980-1990.* (Department of Justice Canada WD1991-13a, April 1991) at 3-4.

[33] Department of the Solicitor General of Canada, *The Myth of "The Mandatory National Charging Policy"*, [unpublished draft] (1993) at 10-11.

[34] Canada, House of Commons, Standing Committee on Health, Welfare and Social Affairs, *Report on Violence in the Family: Wife Battering* (May 1982) at 10.

[35] Canada, House of Commons, *Debates* (8 July 1982) at 19119-19120.

[36] Keri Sweetman, "Male MPs' guffaws at wife beating query enrage female MPs" *The Ottawa Citizen* (13 May 1982).

Association of Chiefs of Police requesting their support and co-operation in addressing spousal abuse and strongly encouraged them to lay charges in wife assault cases.[37]

Similar measures were undertaken by some provincial Attorneys General over the course of 1982-83.[38] In 1983, the Federal Provincial Task Force on Justice for Victims of Crime recommended the development of written guidelines directing that wife assault be treated as a criminal offence and that the decision to charge or prosecute this offence be made independently of the victim's wishes.[39]

By 1986, the Attorneys General and Solicitors General of all jurisdictions had issued directives or guidelines to police and Crown prosecutors with respect to spousal abuse cases. See, as an example, section VI of this Report, for a copy of the December 21, 1983, federal directives.

Although the form and content of these directives varied considerably,[40] they shared essentially the same objective—namely, to ensure that spousal assaults were treated as a criminal matter. Police policies generally required them to lay charges where there were reasonable and probable grounds to believe that an assault had taken place. Crown policies generally required the prosecution of spousal assault cases where there was sufficient evidence to support the prosecution, regardless of the victim's wishes.

In the ensuing years, these directives or polices were revised by all jurisdictions. Revisions often resulted in expanding earlier versions to address additional, specific issues. By the early 1990s, many of the policies of different jurisdictions specifically addressed a range of issues including, for example, the type of conduct and relationship addressed by the policies; the type of assistance and support to be provided to the victim; the use of peace bonds; the procedure to be followed for the withdrawal or staying of charges; and what to do in the case of a recanting or uncooperative victim/witness.

Canada's experience with spousal abuse cases is not unique. A similar victims' advocates and grassroots movement during the 1970s in the United States also succeeded in challenging the traditional non-response of the criminal justice system to spousal abuse cases. By the 1980s, many U.S. states had adopted new approaches, including legislative presumptive (or "pro") and mandatory arrest policies, prosecutorial "no drop" policies and delivery of treatment and intervention programs for offenders.[41]

Today, charging and prosecution policies on spousal abuse remain in effect in all provinces and territories; some, including the federal prosecutorial policy and British Columbia's Violence Against Women in Relationships Policy, are currently under review.[42] Although there is no

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[37] Department of the Solicitor General Canada, *supra* note 33 at 14.

[38] See Federal/Provincial/Territorial Report on Wife Battering to the Meeting of Ministers Responsible for the Status of Women, Niagara-on-the-Lake, May 28-30, 1984.

[39] *Report of the Federal Provincial Task Force on Justice for Victims of Crime* (1983) at 160-161.

[40] See generally, Department of the Solicitor General Canada, *supra* note 33.

[41] Susan L. Miller, "The Paradox of Women Arrested for Domestic Violence" (2001) Violence Against Women 1339 at 1341 and 1370.

[42] See British Columbia Ministry of Attorney General, *Crown Counsel Spousal Assault Policy (Discussion Paper)*, July 2002.

"national" charging or prosecutorial policy on spousal abuse, and even though some jurisdictions refer to the policies as "mandatory" and others as "pro," all jurisdictions continue to support a similar criminal justice system response, the primary objective of which is the criminalization of spousal abuse. In this way, the policies are directed towards both general and specific deterrence: general deterrence by sending a strong and clear message to society that spousal abuse is wrong; and specific deterrence by seeking to prevent the individual abuser from committing further acts of spousal abuse.[43]

Other stated or implicit objectives of the policies are detailed below:

a) Charging Policy:

- removing responsibility (and blame) for the decision to lay charges from the victim;
- increasing the number of charges laid in reported spousal abuse cases;
- increasing the reporting of incidents of spousal abuse; and
- reducing re-offending.

b) Prosecution Policy:

- promoting more rigorous prosecution of cases;
- reducing case attrition by reducing the number of withdrawals and stays of charges;
- promoting victim co-operation in the prosecution; and
- reducing re-offending.

As noted, although the form and content of the current policies vary across the country, they reflect a number of common elements.

i) Charging Policies

a) **Test:** Charges should be laid where there are reasonable and probable grounds to believe that an offence has been committed, regardless of the wishes of the victim. In British Columbia and Quebec, the decision to charge is made by the Crown. In New Brunswick, the decision to lay charges is made by police after receiving advice from the Crown. In these provinces, the Crown must also consider whether it is in the public interest to charge.[44]

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[43] Department of Justice Canada, *Charging and Prosecution Policies in Cases of Spousal Assault: A Synthesis of Research, Academic, and Judicial Responses*", by Trevor Brown, rr2001-5e, November 2000 at 1.

[44] Since the Crown Prosecutors in Quebec authorize the laying of charges or an information, the applicable criteria for decisions related to prosecutions are the same as those applied in relation to charging. In other words, the Crown must consider the following two criteria: the sufficiency of the evidence and the feasibility of prosecution.

b) **Investigation:** Police officers who respond to spousal assault calls must conduct a complete investigation and collect all available evidence from all sources. Some jurisdictions have developed tailored investigation forms for spousal abuse cases.

c) **Peace bonds:** Peace bonds or recognizance orders should not be used in place of charges where the evidence warrants charges.[45]

d) **Withdrawal/stay of Charges:** Withdrawing or staying of charges falls within the purview of the Crown.

e) **Release of an accused from custody by the officer in charge:** Release of the abusive partner/accused should be made subject to appropriate conditions including, for example, non-communication orders, firearms prohibitions, and drug or alcohol prohibitions.[46] Some jurisdictions require victim notification of the release of the accused as well as of any accompanying conditions.

f) **Victims' Services:** Most jurisdictions instruct police to advise victims of available victims' services, to direct them to such services or to do both.

g) **Pre-charge Alternative Measures:** Two jurisdictions currently permit pre-charge diversion of spousal abuse cases, in exceptional circumstances, to Alternative Measures programs formally established under the *Criminal Code*. In British Columbia where there is Crown pre-charge approval, such diversion can only be made on a decision of the Crown and in accordance with specified criteria. Although Prince Edward Island does not have Crown pre-charge approval, all referrals to Alternative Measures, whether pre-charge or post-charge, are approved by the Crown.

The Northwest Territories has a protocol that permits the pre-charge diversion of spousal abuse cases to community justice committees in exceptional circumstances. Pursuant to this protocol, a case may only be diverted on the joint recommendation of the RCMP, the community justice committee and the written consent of the Regional Director for the Department of Justice Canada. Although the protocol exists, the Regional Director has not received any such requests for pre-charge diversion and the RCMP does not consider it as an active policy. This protocol is currently under review.

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[45] This recommendation reflects current pro-charge policies in most Canadian jurisdictions. A different approach involving the use of peace bonds after the commencement of a prosecution is being piloted in the Calgary HomeFront project. For more information, see subsection II (2) v).

[46] In Quebec, since a Crown prosecutor must authorize the laying of charges, the Crown is present for the appearance of the accused. In cases where there are questions regarding the release of an accused, advice may be sought from the Evaluation services for judicial interim release of violent spouses, which is offered by the Quebec Correctional Services. The evaluation service assists in shedding light on and evaluating the situation, providing recommendations for appropriate conditions regarding the release of the accused and, where necessary, providing referrals to resources that may help the accused. This service is designed to facilitate decisions regarding judicial interim release and to promote the security of victims or those close to them.

ii) Prosecution Policies

a) **Test:** A spousal abuse case should be prosecuted where there is a reasonable expectation or prospect of conviction (based on the evidence) and where it is in the public interest to prosecute.[47]

b) **Reluctant and recanting witnesses:** In most jurisdictions, the decision to prosecute is made independently of the wishes of the victim. The fact that the victim is reluctant to co-operate with the prosecution of the accused should not be determinative of the decision to prosecute where independent evidence is available. Where a victim is reluctant or uncooperative, Crown counsel should assess the possibility of securing a conviction without the evidence of the victim (for example, by considering the availability of other evidence) and should consult with the victim with a view to seeking her support and co-operation in the prosecution. Compelling the victim to testify or seeking to find a victim in contempt for non-attendance is generally inappropriate and should only be considered in exceptional circumstances.

c) **Withdrawal/stay of charges:** Charges should only be withdrawn or stayed in exceptional circumstances.

d) **Judicial interim release:** Release of the abusive partner or accused should be made subject to appropriate conditions including, for example, non-communication orders, firearms prohibitions, and drug or alcohol prohibitions. Some jurisdictions direct the Crown to oppose release on bail where there is a significant history of abuse, including, for example, cases where there have been previous breaches of court orders. Most jurisdictions direct the Crown to advise victims of the outcome of the bail hearing and of any conditions.[48]

e) **Contact with the victim:** Crown counsel should try to meet the victim in advance of the trial date and should advise the victim of, and direct her to, available victims' assistance services.

4) ASSESSING THE IMPACT OF THE SPOUSAL ABUSE POLICIES

The spousal abuse policies for charging and prosecution have been the subject of considerable analysis and evaluation in both Canada and in the United States.[49] The Working Group has reviewed much of this research. It has also tried to obtain the input of frontline criminal justice personnel to assess not only their perspectives on the way the policies are working but also to determine any inconsistencies between the policies, as written and adopted, and their day-to-day operation. In reviewing and assessing the impact of the policies, the Working Group has also considered how they have reflected and responded to the diversity of spousal abuse victims.[50]

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[47] In the case of Quebec, the criteria for laying a charge or an indictment involve consideration of the sufficiency of evidence and the feasibility of prosecution.

[48] *Supra* note 46.

[49] Department of Justice, *supra* note 43 at 1.

This body of research indicates that the policies have been both successful and unsuccessful in achieving their objectives. They have also resulted in some unintended negative consequences. Before considering these evaluations, a number of observations must be noted.

First, the Working Group was cognizant of the fact that research from jurisdictions outside Canada may not always be directly comparable to Canadian realities. Indeed, this may even be said for research conducted within Canada. For example, British Columbia, Quebec and New Brunswick have pre-charge Crown approval and, as a result, there may be differences between implementation of the policies in these jurisdictions and in those provinces and territories that do not have pre-charge Crown approval.

Second, the Working Group immediately recognized that there is no single measure of success. The conclusions of individual pieces of research on the success or failure of the policies often seem to depend on whose opinion, or which policy objective, is being considered. By way of illustration: a police officer's complaint about the charging policy may have less to do with a perceived failure of the policy to achieve its objectives than with a belief that the policy circumvents the officer's discretion in individual cases;[51] a Crown Prosecutor's unhappiness with the prosecution policy may have less to do with complaints about the objective of the criminalization of spousal abuse than with the practical difficulty of prosecuting a case with a recanting or reluctant victim/witness; and a victim's satisfaction with a pro-charge policy does not necessarily translate into support for a pro-prosecution policy.

Last, the Working Group recognized the unique nature of spousal violence. Unlike victims of "stranger" violence, spousal abuse victims often have a relationship that existed not only before, but also endures after, the incident of violence. Over 60 percent of women who flee their abusive partner and take refuge in a shelter will return to their partner and suffer subsequent violence: "domestic violence is by its nature a reoccurring crime with a marked tendency to escalation."[52] As well, even where the victim has terminated her relationship with the abuser, she may still have a continuing parental relationship with the abuser.

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[50] In this regard, members of the Working Group sought out the assistance and input of criminal justice personnel in their own jurisdictions. As well, the Working Group was informed by the discussions of FPT senior criminal justice officials at the 2001 FPT Forum on Spousal Abuse, held by the Department of Justice Canada. The Working Group has also applied the IDEAS gender and diversity analysis screening tool developed in 1998 by the former FPT Working Group on Diversity, Equality and Justice.

[51] Pro- or mandatory charging policies do not fetter the discretion of police. They place an emphasis on the necessity to charge where there are legal grounds to do so.

[52] Ursel, *supra* note 31 at 9. Although both women and men experience spousal abuse, the Working Group has chosen to describe the spousal abuse victim as "female" and the abuser as "male" in this Report in recognition of the significant body of data, research and experience that documents spousal abuse as being predominantly an issue of male violence against women.

Knowing the cyclical nature of spousal abuse, the question is often asked: why does she stay? These are some of the many reasons.[53]

- She is often economically dependent on her abusive partner and has nowhere to go (for example, she has no support of family or friends; or she has no knowledge of or is unwilling to seek out an emergency shelter).

- She may stay and endure the violence for the sake of the children.

- She may fear that disclosure of the violence may lead to child protection intervention and removal of her children.

- She is emotionally isolated and feels completely unsupported by friends and family (often as a direct result of manipulative efforts of the abusive partner). She may even feel that she is to blame for the violence.

- She still loves him and continues to hope that he will stop being abusive and will one day be the way he was when she fell in love with him.

- She fears retaliation and fears an escalation in the level of violence and increased risk of harm to herself and to her children if she leaves him.

- She is an immigrant or refugee woman, and she may not want to contact the authorities because she fears that they will deport him because of the violence; she cannot speak English or French; her experience does not identify the police as potential allies; she fears a racist response to her complaint, to her partner or both; or she fears being ostracized by her community.

- She is a woman from a small or remote community and she may have limited or no access to supporting services and programs.

- She may not believe that the police can or will do anything to help her (perhaps because she does not know that spousal abuse is against the law, or she thinks the incident is too "minor", or she has already reported to the police and experienced disbelief or no action by police).

But, no matter what her reasons, she *always* wants the violence to stop.[54]

The Working Group identified three key objectives of the criminal justice system's response to spousal abuse:

- criminalizing spousal abuse;

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[53] See for example, MacLeod, *Wife Battering in Canada*, *supra* note 2 at 32-40; Ursel, *supra* note 31 at 14-18; and Department of Justice Canada, *Ethnocultural Minority Women, Spousal Assault and Barriers to Accessing and Problems In Using the Justice System—A Review of the Literature*, by Janet Currie, (Technical Report 1995-7e) at 67.

[54] Ursel, *supra* note 31 at 16; and Dianne L. Martin and Janet E. Mosher, "Unkept Promises: Experiences of Immigrant Women With The Neo-Criminalization of Wife Abuse" (1995) C.J.W.L. 3 at 5.

- promoting the safety and security of the victim; and
- maintaining confidence in the administration of justice.

Against this backdrop, the Working Group has considered the implementation and effectiveness of the spousal abuse policies from two perspectives: how successful the policies have been in treating spousal assault as a criminal matter, and how well the policies have recognized and responded to the unique nature of spousal assault as distinct from stranger assault.

i) Pro-Charging Policy

As previously noted, the primary objectives of the charging policy are as follows:

- to remove responsibility (and blame) for the decision to lay charges from the victim;
- to increase the number of charges laid in reported spousal abuse cases;
- to increase the reporting of incidents of spousal abuse; and
- to reduce re-offending.

The pro-charging policy has increased the number of incidents reported to police and the number of charges laid in spousal abuse cases, and has reduced risk of harm through re-offending.[55]

Increased Reporting

Although the majority of spousal violence victims do not report to police,[56] GSS data from 1999 indicated that 37 percent of female victims and 15 percent of male victims who reported experiencing abuse also reported incidents to the police. The different reporting rates may be due, in part, to the less serious nature of violence experienced by male victims (p. 9).

Trend analysis of the UCR2 data from 1995 to 2001 revealed a 27 percent increase in reporting of spousal abuse incidents to participating police agencies. The 1999 GSS also noted a significant increase in the percentage of women victims of spousal abuse who reported to police, from 29 percent of women reporting to the *Violence Against Women Survey* in 1993 to 37 percent in 1999. A number of factors may have influenced the increase in reporting including, for example, increased confidence in the criminal justice system's ability to effectively address spousal abuse cases, as well as changes in police reporting practices, reduced social stigma and greater awareness of the illegality of spousal violence and of available services.[57]

For 93 percent of women and 79 percent of men, the reason they reported the spousal abuse to the police was to stop the violence or to receive protection from the police against the violence (p. 18). For some victims at risk, particularly those who are socially and economically marginalized, including Aboriginal and low-income victims, as well as victims in rural or remote communities, police are often the only source of accessible immediate help.[58]

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[55] Ursel, *supra* note 31 at 19.

[56] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 9 at 32.

[57] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 6 at 8-9.

Police Response

UCR2 data for 2000 indicate that charges were laid in 82 percent of spousal abuse incidents reported to police; the remaining 18 percent of incidents were cleared otherwise. In 13 percent of cases, police did not lay charges at the request of the victim (21 percent for cases involving male victims and 11 percent for cases involving female victims). Police exercised their discretion and did not lay charges in 3 percent of all incidents.[59] These proportions have remained relatively stable since trend data have been available through the UCR2 in 1995.

There are a few reported studies on the issue of police charging practices in spousal abuse cases. For example, a ten-year study of the pre- and post-charging policy's implementation in London, Ontario, revealed that the number of charges laid by police in spousal abuse cases rose from 2.9 percent in 1979 (pre-policy) to 67 percent in 1983 and to 89 percent in 1990.[60]

Reduction in Re-offending

Available research offers conflicting findings as to the effect of charging policies on the reduction of subsequent offending by spousal abusers. Little is known about whether the charging policy has had any impact on the rate of arrest of spousal abusers; anecdotal evidence suggests, however, that there has not been any increase in the number of arrests made in these cases.[61]

One of the primary pieces of research in this area was conducted in Minneapolis in 1984, which had a pro-arrest rather than a pro-charging policy. It found that the arrest of an abusive partner reduced the rate of re-offending within the ensuing six-month period by half when compared to other, less formal police interventions.[62] Replication of this study in six U.S. cities, however, revealed less positive findings, including that arrest of the abuser could, in some cases, increase the incidence of re-offending when the abuser also presented with other personal characteristics (e.g., unemployment).[63] A more recent replication of the same study found, however, that the arrest of a batterer was consistently related to reduced re-offending and also found no association between arrest and an increased risk of harm for the victim.[64] A similar decrease in the level of violence has also been noted in Canada as a result of the pro-charging policy.[65]

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[58] Ursel, *supra* note 31 at 16; Tammy Landau, "Policing and Security in Four Remote Aboriginal Communities: A Challenge to Coercive Models of Police Work" (1996) C.J.C. 1 at 8; and Martin and Mosher, *supra* note 54 at 35.

[59] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 6 at 8.

[60] London Family Court Clinic Inc., *supra* note 32 at 24.

[61] Section 495 of the *Criminal Code* provides that the police may arrest, without a warrant, for a summary conviction or hybrid offence, *inter alia*, to prevent the continuation or repetition of the offence or the commission of another offence. See Diana Ginn, "Wife Assault, the Justice System and Professional Responsibility" (1995) Alberta Law Review 908 at 913.

[62] Lawrence Sherman, and Richard Berk, "The Specific Deterrent Effects of Arrest for Domestic Assault" (1984) American Sociological Review 49 at 261-272; and United States Department of Justice, *The Effects of Arrest on Intimate Partner Violence: New Evidence From the Spouse Assault Replication Program*, Christopher D. Maxwell, Joel H. Garner and Jeffrey A. Fagan (July 2001) at 1.

[63] Department of Justice Canada, *supra* note 43 at 1; see also Ursel, *supra* note 31 at 5-7.

How has the implementation of the charging policy been viewed by key actors?

Spousal abuse victims and victims' service providers have expressed strong support for the pro-charge policy.[66] For example, a 1996 study on the experience with the mandatory charging policy in the Yukon reported that 85 percent of victims thought that the mandatory policy of charging, regardless of the victim's preferences, was a good one. A further 68 percent of victims reported that the policy made them more confident about reporting future incidents.[67] Similarly, a review of the experiences of service providers working with ethnocultural women victims of spousal abuse indicates support for the mandatory charging policy. Since it removes responsibility for the decision to charge from the victim, it underscores the importance of the societal message that spousal abuse is unacceptable, and it empowers women.[68]

As already noted, the 1999 GSS reported that the reason given by 93 percent of women victims who reported spousal abuse to police was that they wanted the violence to end. For these women, calling the police translates into an expectation that this will make the police attend at the scene, which will in turn, stop the current incident of violence.[69] Spousal abuse victims clearly want the violence to end and for most women, this is synonymous with the pro-charging policy; however, for many victims, it is not synonymous with a pro-prosecution policy.[70]

An unintended negative consequence of the successful implementation of the charging policy has been its effect on spousal abuse victims who are members of over-criminalized communities. In particular, Aboriginal, lower income, visible minority and immigrant women are sometimes more reluctant to call the police in response to spousal abuse incidents for fear of the repercussions of discriminatory treatment of their partner, their children or themselves.[71]

Police reaction to the pro-charging policy has been mixed. In the ten-year study of the pre- and post-charging policy's implementation in London, Ontario, police perception that the policy is effective had increased from one third in 1985 (four years after its adoption) to just over one half (52.3 percent) in 1990 (nine years after its adoption). In 1990, while almost one-half (48.1 percent) of these police officers believed that the policy helped battered women, two-thirds

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[64] United States Department of Justice, *supra* note 62 at 2.

[65] London Family Court Clinic, *supra* note 32 at 25.

[66] Ursel, *supra* note 31 at 4.

[67] Department of Justice Canada, *Spousal Assault and Mandatory Charging in the Yukon: Experiences, Perspectives and Alternatives*, by Tim Roberts (WD1996-3e) at 69.

[68] Department of Justice Canada, *Responding to the Needs of Ethnocultural Minority Women in Situations of Spousal Assault*, by Janet Currie (Technical Report 1995-8e) at ix-x.

[69] Tammy Landau, "Women's Experiences With Mandatory Charging for Wife Assault in Ontario, Canada: A Case Against the Prosecution" in *Domestic Violence: Global Responses* (Great Britain: Academic Publishers, 2000) 141 at 152.

[70] Department of Justice Canada, *supra* note 67 at 111; and Department of Justice Canada, *supra* note 68 at xi and 34.

[71] Ursel, *supra* note 31 at 14-15; and Department of Justice Canada, *Synthesis of Department of Justice Canada Research Findings on Spousal Assault*, by Tammy Landau (WD1998-5e) at 12-15. See also Miller, *supra* note 41 at 1342-1343.

(64.9 percent) believed that the policy provided an important message to the community. Lastly, this study found that police officers with more years of experience and those in supervisory positions held the most positive views on the policy as compared to constables.[72]

A similar difference in perception between members with more years of experience and those with less, was found in the Metro (Toronto) Woman Abuse Protocol Project. In this study, the 6 of 17 officers who supported the policy had a minimum of seven years of experience.[73] This study also found that a common criticism of the policy is that it inappropriately limits police discretion. Most of the officers interviewed in this study felt that charging an abuser (i.e., a legal response) was not always the best solution to a complex problem that was still viewed by some respondents as something other than a criminal matter.[74] Other researchers have noted similar findings of the persistence of police attitudes that prevent a positive police response to spousal abuse calls, particularly where the victim does not meet their expectation of a helpless and blameless victim deserving of police assistance.[75]

Some researchers have noted that notwithstanding police concerns about their lack of discretion in spousal abuse cases, in fact, some police officers continue to exercise discretion with respect to charging abusers for breach of protection orders in these cases. For example, a study from 1993-94 of the police in Delta, British Columbia, found that despite a zero tolerance policy, some police officers rarely charged an offender for breach of a protection order even where they were presented with a copy of a current protection order, where the offender was still at the scene and where the victim wanted the offender arrested.[76]

Some members of the police who are supportive of the pro-charging policy have nonetheless expressed frustration with it. The frustration often flows from the knowledge that despite their best efforts to support the victim and to comply with the policy, there is a significant possibility that the victim will recant and the Crown prosecutor will stay or withdraw the charge.

Another criticism of the lack of police discretion in individual cases has been that strict adherence to the pro-charging policy requires police to lay dual charges, i.e., to charge both parties, irrespective of whether one party's violence was self-defensive. American research has found that "dual arrests/charges" have dramatically increased as a direct result of mandatory charging and arrest policies.[77]

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[72] London Family Court Clinic, *supra* note 32 at 16 and 31-36.

[73] Kelly Hannah-Moffat, "To Charge or Not to Charge: Front Line Officers' Perceptions of Mandatory Charge Policies" in Mariana Valverde, Linda MacLeod & Kirsten Johnson, eds., *Wife Assault and the Canadian Criminal Justice System* (Toronto: University of Toronto, 1995) 36 at 43 and 45.

[74] Hannah-Moffat, *supra* note 73 at 43 and 45.

[75] Ursel, *supra* note 31 at 18; George S. Rigakos, "The Politics of Protection: Battered Women, Protection Orders, and Police Subculture" (1998) at 91. See as well, Ginn, *supra* note 61 at 912-913 and Department of Justice Canada, *A Review of Section 264 (Criminal Harassment) of the Criminal Code of Canada*, by Richard Gill and Joan Brockman (WD1996-7e) at 43.

[76] Rigakos, *supra* note 75 at 90-91. For the purpose of this study, "protective court orders" included *Criminal Code* recognizance orders under s. 810 and civil restraining orders issued under the *BC Family Relations Act*, s. 36.1 (breach of which was a provincial offence, processed under the *Offences Act*).

[77] Miller, *supra* note 41 at 1343.

Available Canadian research confirms that dual charging in spousal abuse cases occurs in Canada. For example, the incidence of dual arrests for spousal abuse in Winnipeg was 6 percent (166 cases) in 1992-93 and eight percent (208 cases) in 1996-97, for an average of seven percent through the whole period.[78] In Alberta, dual arrests were made in four percent of cases in 1999, in six percent of cases in 2000 and in five percent of cases in 2001.

Some jurisdictions have responded to this issue by adopting "primary aggressor" models.[79] Such a model typically requires the police to make reasonable efforts to identify the primary aggressor in any spousal abuse incident including, for example, whether either person acted in self-defence (as shown by offensive and self-defensive injuries), the history of violence between the persons, and differences in the physical size between the persons. The Manitoba Lavoie Inquiry recommended the adoption of a primary aggressor rule.[80] Another suggested possible response to this issue is to require Crown review and approval of any counter allegation of spousal violence.[81]

ii) Conclusions

The pro-charging policies adopted in Canada during the 1980s have significantly contributed to the strengthening of the criminal justice system's response to spousal abuse. Research on spousal abuse confirms that there has been an increase in the reporting of spousal abuse incidents as well as in the number of charges laid in these cases. It has also demonstrated a positive impact in reducing the incidence of re-offending.

While it is not possible to attribute the improved criminal justice system response solely to the adoption of the pro-charging policies, clearly the policies have played an integral role toward this end. Although it is also true that the pro-charging policies have resulted in some unintended negative consequences, the majority of spousal abuse victims nonetheless express strong support for the pro-charge policy. A spousal abuse victim needs to know that if she calls the police to report an incident of violence, the police will come and will, at a minimum, stop the immediate incident of violence. The pro-charging policy ensures a strong and consistent first line of response by the criminal justice system that contributes to ensuring the safety and security of spousal abuse victims.

The pro-charging policy seeks to ensure that the police treat spousal abuse as a criminal matter and to lay charges where there are reasonable grounds to believe that an offence has been committed and, in those jurisdictions with Crown pre-charge approval, it is in the public interest to lay a charge. Measures that contribute to law enforcement's understanding of and sensitivity to the unique dynamics of spousal abuse help to ensure implementation of the policy in a manner consistent with its objectives.

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[78] Ursel, *supra* note 31 at 20.

[79] See for example, the San Diego Police Department's "Dual Arrest—Primary Aggressor Rule" (March 1996).

[80] Commission of Inquiry into the Deaths of Rhonda Lavoie and Roy Lavoie, *A Study of Domestic Violence and the Justice System in Manitoba* (1997) at 119.

[81] Ursel, *supra* note 31 at 21.

iii) Recommendations

The Working Group recommends the retention of the current pro-charging policies for spousal abuse cases. In this regard, the current test should continue to apply, namely, that a charge should be laid where there are reasonable grounds to believe that an offence has been committed and, in jurisdictions with Crown pre-charge approval, when it is in the public interest to lay a charge.[82]

These policies are often described as "pro-charging" policies; nonetheless, they are, in fact, the applicable standards for all criminal conduct. Their specific application to spousal abuse cases played a pivotal role in helping to make the critical distinction between the criminal justice system's treatment of spousal abuse as a "criminal matter" and its historical treatment of spousal abuse as a "private matter."

The Working Group also recommends that the elaboration of pro-charging policies for spousal abuse specifically address, at a minimum, the following key issues.

- **Test not met:** Where there are no reasonable grounds to believe that an offence has been committed, but police nonetheless believe that the victim's safety may be at risk, police should consider the availability of other responses, including civil protection orders under provincial and territorial legislation on domestic violence, where applicable (see below), and recognizance orders under section 810 of the *Criminal Code*. However, these alternative responses should not be used in place of charges where the test has been met.

- **Arrest:** The pro-charging policy should not be viewed as modifying the standard criteria used to determine whether the circumstances of the case require the arrest of the offender. All of the circumstances should be evaluated before police decide to arrest, with or without a warrant.

- **Dual charges:** Where the facts of a particular case initially suggest dual charges against both parties, police should apply a "primary aggressor" screening model, seek Crown review and approval of proposed dual charges for spousal violence, or do both

- **Pre-charge diversion to alternative justice processes:** The majority of the Working Group recommends against pre-charge diversion of spousal abuse cases to any alternative justice processes. The minority (British Columbia and Prince Edward Island) only allow pre-charge diversion of spousal abuse cases to Alternative Measures programs established pursuant to the *Criminal Code* on Crown approval (see below).[83]

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[82] For example, in Quebec the Crown Prosecutor's decision to approve the laying of an information or an indictment must be preceded by a verification of the investigation report in light of two sets of criteria, namely, criteria related to the sufficiency of the evidence and criteria related to the feasibility of the prosecution. Effectively, the Crown Prosecutor must be personally convinced, having examined all of the evidence, including possible defences, that an offence has occurred and that the offence was committed by the accused and be reasonably convinced of the Crown's ability to establish the guilt of the accused.

[83] Quebec does not have any official Alternative Measures programs and therefore does not take a position on the use of these programs in spousal abuse cases.

- **Investigation:** Attending police must be directed to conduct a complete investigation and to collect all available evidence from all sources and not just from or primarily from the victim.

- **Risk assessment:** When conducting any risk assessment, police should apply validated tools to assess the safety and security of the victim throughout the process, including for bail purposes. Police should be supported in this regard through on-going training and education regarding risk assessment in spousal abuse cases.

- **Release of an accused from custody by the officer in charge**: In assessing whether there are reasonable grounds to believe that the accused should not be released, the safety and security of the victim should be paramount. The officer in charge should consider whether there is a history of abuse including previous breaches of bail or probation conditions, and criminal or civil court orders. Where the decision is made to release the accused, the officer in charge should require the accused to enter into an undertaking that includes appropriate conditions such as non-communication, non-attendance (for example, at residence, schools and place of employment), firearms prohibitions and drug and alcohol prohibitions. The victim should be advised of the decision to release an accused from custody and of any applicable conditions.

- **Victim support:** Police should be required to advise of, and direct victims to, available victim services and other supporting agencies (such as shelters).

iv) Pro-Prosecution Policy

As already noted, the pro-prosecution policy has several objectives:

- promoting more rigorous prosecution of cases;
- reducing case attrition by reducing the number of withdrawals or stays of charges;
- promoting victim co-operation in the prosecution; and
- reducing re-offending.

Research conducted shortly after the adoption of the policy indicates some level of success in reducing the case attrition rate in spousal assault cases. In the London, Ontario, ten-year study, researchers found that prior to the adoption of the policy, 38.4 percent of charges were dismissed or withdrawn; in 1983 (two years after the adoption of the policy), this rate had decreased to 16.4 percent and had decreased further to 10.9 percent by 1990.[84]

A 1988 Saskatchewan study on the rate of prosecution of spousal abuse cases following adoption of the policy reported that 89 percent of charges laid proceeded to court. Of these cases, charges were stayed in 5 percent of cases and withdrawn in 6 percent of cases.[85]

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[84] London Family Court Clinic Inc., *supra* note 32 at 19 and 51.

[85] Referenced in Department of Justice Canada, *Literature Review of the Manitoba Spouse Abuse Project*, by Prairie Research Associates Inc. (Technical Report 1991-1) at 23.

A review of the processing of spousal abuse cases in the Winnipeg Family Violence Court from 1992-97 found that 46 percent of charges were stayed; the next most frequent outcome was the entering of guilty pleas in 43 percent of cases. This study concluded that the prosecution policy (in the case of Manitoba, a zero tolerance policy) served two functions: to catch most of the cases at the start of the process; and to enable the exercise of prosecutorial discretion in applying the policy and to thereby weed out cases such as those for which there was no reasonable prospect of conviction and therefore no reasonable grounds to proceed to court (stayed).[86]

As to whether the prosecution policy has been successful in promoting victim co-operation in the prosecution of offences, the most frequently cited reason for staying or withdrawing spousal abuse charges is the reluctance of the witness and the lack of other evidence.[87] Some Crown prosecutors have commented that the reluctant female spousal abuse victim is more common than not and is a matter of considerable frustration for them.[88] Faced with this reality, it is not surprising to learn that some Crown prosecutors find the pro-prosecution policy to be rigid and an unreasonable constraint on their exercise of discretion, to be impractical and to improperly treat all spousal assault cases the same.[89]

One innovative response to the reluctant witness has been developed in the Winnipeg Family Violence Court. Where a victim indicates that she will not testify because she does not want her spouse incarcerated and when she indicates that her ultimate wish is for the violence to end, the Crown will "testimony bargain," i.e., the Crown may offer to drop the more serious charge that might result in imprisonment and recommend probation and court-ordered treatment for the offender in exchange for her testimony. If accepted, defence counsel is advised that the victim will testify, which often prompts the accused to plead guilty.[90]

Another response is to more actively and effectively support the victim throughout the prosecution. One recent study found that the two most important determinants of victim co-operation in the prosecution of a spousal abuse case were the availability of victim/witness assistance and support and the availability of videotaped testimony. This same study also found that when a prosecutor perceives a victim to be co-operative, the prosecutor is seven times more likely to prosecute that case than one involving a victim who is perceived to be uncooperative.[91]

Faced with a reluctant, uncooperative victim, Crown prosecutors will stay or withdraw the charges absent other reliable and admissible evidence. Such independent evidence might include statements from other witnesses, 911 tape recordings, medical records of injuries sustained, photographs or videotape of the scene on arrival by police at the scene and of the victim, and other physical evidence.

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[86] Ursel, *supra* note 31 at 28; and Statistics Canada (Canadian Centre for Justice Studies), *supra* note 2 at 46-47.

[87] Department of Justice Canada, *supra* note 85 at 24 and Department of Justice Canada, *Manitoba Spouse Abuse Tracking Project*, by Prairie Research Associates (Final Report, Vol. 1) (WD1994-18e) at 69.

[88] Linda MacLeod, "Policy Decisions and Prosecutorial Dilemmas: The Unanticipated Consequences of Good Intentions" in *Wife Assault and the Canadian Criminal Justice System*, *supra* note 73 at 56; Department of Justice Canada, *supra* note 43 at 9.

[89] MacLeod, *supra* note 88 at 49-55.

[90] Ursel, *supra* note 31 at 30.

[91] Myrna Dawson, and Ronit Dinovitzer, "Victim Cooperation and the Prosecution of Domestic Violence in a Specialized Court" (2001) Justice Quarterly 593 at 614.

While most spousal abuse victims are very supportive of a pro-charging policy, primarily because it serves to stop the violence at least in the immediate instance, many victims have expressed a desire for a more flexible prosecution policy that better addresses the needs and realities of victims and their families.[92]

In a survey of 74 female spousal abuse victims in Abbotsford, British Columbia, in 2000, 86 percent of victims indicated support for the charging policy. However, 40 percent of victims did not wish to proceed with the prosecution; of these victims, three out of four cited, as a reason for non-cooperation, that they wanted to reconcile with the offender and almost one-third wanted the non-communication order dropped. Also, 30 percent of all victims reported experiencing financial hardship following the arrest of the abuser.[93]

Other researchers have identified additional factors that influence a spousal abuse victim's level of co-operation with the prosecution. Victim co-operation is more likely when:

- the victim receives much-needed social support from family and friends including, for example, financial assistance and assistance with child care; and
- the victim receives timely and continuous information about the criminal justice system and about the status of her case as well as support throughout the process.[94]

v) Conclusions

Experience with the pro-prosecution policy for spousal abuse indicates that its test is not uniformly interpreted by those within and outside the criminal justice system, which, in turn, has resulted in mixed views on the success of the policy.

Those who interpret the policy as requiring the rigorous prosecution of *all* spousal abuse cases, irrespective of any other factors, are more likely to conclude that the policy has not been as effective as initially hoped. Those who interpret the policy as requiring the prosecution of all spousal abuse cases where, based on all of the evidence, there is a reasonable prospect of conviction and it is in the public interest to prosecute, are more likely to conclude that the policy has had a positive impact in strengthening the criminal justice system's response to spousal abuse. The Working Group supports the latter interpretation and perspective.

The research clearly documents some frustrations with the policy by prosecutors, victims and the public alike. Some prosecutors express unhappiness about being expected to prosecute cases absent a co-operative victim/witness. Some victims do not want to support a prosecution against, or to testify against, a partner with whom they have reconciled. Some victims, on the other hand, are of the view that the criminal justice system still does not treat spousal abuse seriously enough, as reflected by the sentences imposed on spousal abusers. As well, members of the public often voice opposition to a process or policy that does not uniformly lead to the traditional criminal justice response namely, incarceration.

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[92] Department of Justice Canada, *supra* note 67 at 111; Landau, *supra* note 69 at 152.

[93] Department of Justice Canada, *supra* note 43 at 4.

[94] See, for example, Lauren Bennett, Lisa Goodman, and Mary Ann Dutton, "Systemic Obstacles to the Criminal Prosecution of a Battering Partner—A Victim Perspective" (1999) Journal of Interpersonal Violence 761; and Martin and Mosher, *supra* 54 at 41-43.

The Working Group believes that the pro-prosecution policy, interpreted and applied in the intended manner, will help to ensure a strong and consistent criminal justice system response to spousal abuse. Other measures that will contribute to the effectiveness of the policy include:

- providing support for the victim throughout the process, including timely and regular information about the process and progress of the case, which increases the likelihood of victim co-operation with the prosecution;
- enhancing investigative techniques and practices in spousal abuse cases to obtain all available evidence and not just or primarily that of the victim/witness, which enhances the likelihood that these cases will meet the test of the pro-prosecution policy; and
- offering a broader set of criminal justice system responses (i.e., in addition to a trial and incarceration), with the necessary safeguards, that will strengthen the ability of the criminal justice system both to hold the offender accountable for his actions and to respond to the unique realities of spousal abuse victims.

vi) Recommendations

The Working Group recommends the retention of the current pro-prosecution policies for spousal abuse. In this regard, the current test should continue to apply, namely, that spousal abuse cases should be prosecuted where, based on all of the evidence, there is a reasonable prospect of conviction and it is in the public interest to prosecute.[95]

These policies are often described as "pro-prosecution" policies; nonetheless, they are, in fact, the applicable standards for all criminal conduct. Their specific application to spousal abuse cases played a pivotal role in helping to make the critical distinction between the criminal justice system's treatment of spousal abuse as a "criminal matter" and its historical treatment of spousal abuse as a "private matter."

The Working Group also recommends that the elaboration of pro-prosecution policies for spousal abuse specifically address, at a minimum, the following issues.

- **Judicial interim release:** Crown counsel should require from police or, where bail hearings are conducted by the police, the investigating police officer should provide, sufficient information to assess the risk of harm to the victim's safety if the accused is released (for example, the results of the application of validated risk assessment tools or evidence outlining any history of violence, threats of serious violence, prior breaches of protective court orders, the use or presence of weapons, employment problems, substance abuse and suicide threats). The concerns of the victim should be ascertained prior to the hearing. Where the determination is made to release the accused pending trial, Crown counsel should seek appropriate conditions of release, including non-communication, firearms and drug/alcohol prohibitions. The victim should be notified of the outcome of the bail hearing, including conditions of release. In the event of a breach of bail conditions, Crown counsel should consider both prosecuting the breach and seeking an order cancelling the accused's release.

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[95] In the case of Quebec, the criteria for laying a charge or an indictment involve consideration of the sufficiency of evidence and the feasibility of prosecution.

- **Witness information, notification and support**: Spousal abuse victims should be provided with timely information about their case (for example, via police, victim witness assistant or Crown counsel). Victims should also receive continuing support (for example, by victim witness assistants) throughout the process.

- **Reluctant and recanting witnesses:** Where a victim is unwilling or unable to testify or to support the prosecution, Crown counsel (via the police or victim service workers) should endeavour to determine the reason for the victim's reluctance (for example, she may be recanting because no spousal abuse actually occurred or she may be recanting because she has been threatened or pressured to do so by the accused). If the recantation is not credible, Crown counsel should consider whether there is other credible evidence on which to proceed in the absence of direct testimony by the victim. Where there is no longer a reasonable prospect of conviction based on the available evidence, the prosecution should be terminated.

- **Peace bonds:** Where the pro-prosecution policy's test has been met, recognizance orders under section 810 of the *Criminal Code* should not to be used in lieu of a prosecution.[96]

- **Post-charge referral to alternative justice processes:** The majority of the Working Group recommends against the use of post-charge alternative justice processes in spousal abuse cases, except in accordance with the criteria summarized in the next subsection. The minority (British Columbia and Prince Edward Island) only allow post-charge diversion of spousal abuse cases to Alternative Measures programs established pursuant to the *Criminal Code* on Crown approval and as set out more fully in the next subsection.[97]

- **Sentencing:** In making recommendations as to sentence, Crown counsel should:

  - consider section 718.2 of the *Criminal Code* which makes the abuse of one's spouse or child an aggravating factor for sentencing purposes;

  - ensure that the victim has had an opportunity to prepare and present a victim impact Statement (section 722.2 of the *Criminal Code*); and

  - seek appropriate conditions from the court as part of the sentence, such as conditions addressing non-communication and non-attendance, firearms prohibitions, drug/alcohol prohibition and, if appropriate, a condition directing assessment for counselling and/or treatment in an approved abusive partner intervention program.

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[96] This recommendation reflects current pro-prosecution policies in most Canadian jurisdictions. A different approach involving the use of peace bonds after the commencement of a prosecution is currently being piloted in the Calgary HomeFront pilot project. For more information, see subsection II (2) v).

[97] Quebec does not have any official Alternative Measures programs and therefore does not take a position on the use of these programs in spousal violence cases.

5) USE OF ALTERNATIVE JUSTICE PROCESSES IN SPOUSAL ABUSE CASES

The past two decades have seen a number of reforms to the criminal law that reflect a growing interest in using alternative processes to deal with criminal conduct and in exploring alternative sentencing options for offenders. For example, young offenders legislation was amended in 1985 to permit the use of Alternative Measures.[98] In 1996, the *Criminal Code* was amended to permit the use of formal Alternative Measures programs to deal with adult offenders.[99] This reform, together with the emergence of a strong interest in restorative justice processes, generally, has increased public and government interest in exploring alternatives to traditional justice processes to deal with offending behaviour, including spousal abuse.

The Working Group has reviewed the use of these alternative justice processes in spousal abuse cases, including their compatibility with the pro-charging and pro-prosecution spousal abuse policies.

i) Alternative Measures

Objectives of Alternative Measures

When the *Criminal Code* was amended in 1996 to permit the use of Alternative Measures for adult offenders, these amendments were described as having two primary objectives: "to prevent criminal behaviour and to avoid the harm that can sometimes be done when minor offenders are dealt with through the courts."[100] As a result, where it is consistent with the need to protect the public, these provisions allow for the diversion of "first-time or less-serious offenders" from the courts to thereby "free up valuable prosecutorial and court resources to deal with more serious cases."[101]

Over time and as experience with these provisions continues to grow, jurisdictions have begun to consider the merits of using Alternative Measures for repeat and more serious offenders.

How Do Alternative Measures Work?

Section 717 of the *Criminal Code* permits the use of Alternative Measures when doing so is not inconsistent with the protection of society and where the following conditions are met:

- the proposed measure is part of an Alternative Measures program authorized by the Attorney General;
- diversion to an Alternative Measure program is appropriate, given the needs of the offender and the interests of society and of the victim;
- the offender fully and freely consents to be a participant in the Alternative Measures program;
- the offender, before consenting, has been advised of his or her right to counsel;

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[98] *Young Offenders Act*, R.S.C., 1985, c.Y-1, s. 4.

[99] Bill C-22, formerly Bill C-41, proclaimed into force September 3, 1996.

[100] Department of Justice Canada, Sentencing Reform (Backgrounder) (28 August 1996) at 3.

[101] *Ibid.* at 3.

- the offender accepts responsibility for the act or omission that forms the basis of the offence that he or she is alleged to have committed;
- there is sufficient evidence to proceed with a prosecution; and
- the prosecution is not barred at law.

An offender can be referred to an Alternative Measures program either before or after a charge has been laid. The administration of an Alternative Measure does not require court supervision although, if the person does not complete the measure successfully, he or she may ultimately be charged or the charge may be prosecuted.[102]

Offenders who successfully complete Alternative Measures do not have a record of conviction against them.[103] Records made of the Alternative Measure followed and the offender's response to it cannot be introduced into evidence more than two years after the end of the Alternative Measures process, except for sentencing proceedings in accordance with subsection 721(3) of the *Criminal Code*.

Alternative Measures programs usually include an out-of-court mechanism for determining the consequences to the offender for the offence. This can occur through a number of different ways, including through an intake interview and assessment, followed by a review by a justice committee, family group conference or mediated dispute resolution process, or by a direct referral to an appropriate program. Ordinarily, the offender enters into an agreement in which he or she promises to do certain things in consequence of his or her behaviour. That agreement might include making an apology, participating in a treatment program, making restitution, serving the community or working with a counsellor or elder.[104]

Existing Alternative Measures Programs and Policies

The federal government and the majority of the provinces have approved Alternative Measures programs in accordance with the provisions of the *Criminal Code*. The Alternative Measures programs expressly exclude spousal abuse cases in all but three jurisdictions: the Northwest Territories, British Columbia and Prince Edward Island. Manitoba, Ontario, Quebec and Newfoundland and Labrador do not have Alternative Measures programs. The constitutionality of Nova Scotia's exclusion of spousal abuse cases was unsuccessfully challenged recently.[105]

As previously noted, a protocol exists in some Northwest Territories communities that contemplates pre-charge diversion of spousal abuse cases to community justice committees in exceptional circumstances and on the joint recommendation of the RCMP, the community justice committee and the written consent of the Regional Director for the Department of Justice

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[102] Admissions made by the person during the course of Alternative Measures are not admissible against the person in subsequent civil or criminal proceedings: *Criminal Code*, Subsection 717(3).

[103] Similarly, offenders processed through the traditional criminal justice system who receive a conditional discharge or absolute discharge, either with or without participation in a specialized program, do not receive a record of conviction.

[104] Department of Justice Canada, *An Evaluation of Post-Charge Diversion (Final Report)*, (rr 2001-7e) at 1-2.

[105] *Boudreau* v. *R. (17 April 2002)*, S.H. No. 176596, oral decision published October 26, 2002, N.S.S.C. per MacDonald, A.J.C.

Canada. There have been no pre-charge diversion requests to date. The protocol is currently being reviewed by the Northwest Territories, the federal government, and the RCMP.

British Columbia and Prince Edward Island allow for the diversion of spousal assault cases to an Alternative Measures program, including pre-charge, in exceptional cases. Neither jurisdiction defines what constitutes "exceptional" circumstances.

In British Columbia, where there is Crown pre-charge approval, the diversion of any cases including spousal abuse cases can only occur on decision of the Crown and in accordance with specified criteria. Although Prince Edward Island does not have Crown pre-charge approval, all referrals to Alternative Measures, whether pre-charge or post-charge, must be approved by the Crown.

Few cases have been diverted to Alternative Measures in these two jurisdictions. The results of a review by Prince Edward Island for the calendar years 1999, 2000 and 2001 indicate that of the total of 556 cases diverted to Alternative Measures processes, only twenty-two cases (four percent) involved spousal abuse:[106]

- five of these cases were referred pre-charge;
- fourteen of these cases were referred post-charge; and
- three cases did not indicate whether the referral was pre-or post-charge.

In British Columbia, approximately one percent of all cases diverted to Alternative Measures processes, involved spousal abuse cases, pre-charge:

- 26 cases to mid-2002;
- 65 cases in 2001;
- 72 cases in 2000; and
- 47 cases in 1999.

Of these cases, approximately half involved female accused, of which only two cases involved female accused who claimed to have acted in self-defence.

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[106] Equinox Consulting Inc., *A Study of Victim Satisfaction with Alternative Measures on Prince Edward Island*, December 2002, at p. 24.

ii) Restorative Justice Processes

Restorative justice is a term that is often used. There is not, however, a clear, common definition of the term across Canada.[107] For the purposes of this review, the Working Group uses the term to describe voluntary processes that complement, support or are alternatives to the traditional criminal justice process and that are available where the offender is willing to accept responsibility for his conduct and to work with the community (including the victim) to repair the harm done and to restore harmony.[108]

Some alternative processes may be restorative in nature but are not necessarily restorative justice processes including, for example, such alternative processes as circle sentencing and victim-offender contact facilitated by correctional authorities. Restorative justice processes offer a range of responses, including intervention at different stages both outside (pre-charge) and within (post-charge) the formal justice system.[109] Unlike Alternative Measures, the rules and procedures that apply to restorative justice processes are not prescribed by the *Criminal Code*.

There is anecdotal evidence to suggest that some spousal abuse cases are being diverted, both pre-charge and post-charge, to alternative justice processes (i.e., to Alternative Measures or to restorative justice processes). In some instances, this is occurring in a manner inconsistent with the jurisdiction's prevailing program or policy permitting diversion of spousal abuse cases; in others, it is occurring notwithstanding the jurisdiction's express policy against such diversion.

Support for the Use of Alternative Measures and Restorative Justice Processes in Spousal Abuse Cases

The traditional criminal justice response of charging, prosecuting and incarcerating an offender is not always responsive to the realities of a spousal abuse case. For example, a traditional criminal justice response that results in the offender's incarceration may not be the best outcome for the victim where she has reconciled with the offender and where she is dependent on the offender as the primary source of income for their family. Similarly, a traditional criminal justice response that prohibits any contact between the offender and victim may not be practical where the parties reside in a rural, remote or small urban centre where it may not be possible for them to completely avoid contact with each other.

Alternative justice approaches are sometimes advocated by police and prosecutors who are frustrated by a pro-charge/pro-prosecution policy, which they believe does not adequately protect all spousal abuse victims or recognize the difficulties inherent in prosecuting these cases. For example, they believe that in cases where it is likely that a charge will be stayed, withdrawn or dismissed because the victim is uncooperative and refuses to testify, an alternative justice response may still be a better result than, for example, the usual alternative criminal justice response of a peace bond. In such circumstances, participation in an alternative process might provide some additional measure of protection to the victim and assurance to the community that some action has been taken to prevent and deter the behaviour. If nothing else, positive participation in such processes might keep the victim engaged in the system and willing to turn to police and the courts in the event that there is a subsequent incident of abuse.

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[107] At the international level, the United Nations describes a restorative justice process as one that involves the victim, the offender and the community and that seeks to resolve matters arising from the crime and to thereby restore harmony between the victim, the offender and the community: United Nations' Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, approved at the 11th Session of the U.N. Commission on Crime Prevention and Criminal Justice, E/2002/30, E/CN.15/2002/14 at 7.

[108] There are those who feel that truly restorative processes require the consent and voluntary participation of the victim of the offence. Others feel that restorative processes can be legitimate and effective without victim consent or participation and that the role of the victim in the process is defined by the individual circumstances of each case. Consequently, while there is a shared sense that this may be an important component of restorative processes generally and a critical consideration in spousal abuse cases, the working group could not reach consensus on including a requirement for victim consent in its working definition of restorative justice.

[109] See, for example, Federal/Provincial/Territorial Working Group on Restorative Justice, *Restorative Justice in Canada: A Consultation Paper*, May 2000.

As well, some argue that the use of alternative justice responses in spousal abuse cases is more consistent with the recent sentencing reforms, including reduced reliance on criminal courts and less use of traditional sentencing options, such as incarceration.

Thus, alternative justice responses are sometimes perceived to be better able to:

- respond to the fact that many couples will reconcile after the specific incident of spousal violence by supporting measures that are more conducive to a safe reconciliation;
- reflect the diversity of spousal abuse cases as well as the needs of the parties and societal interests than the traditional justice system;
- offer resolutions, including treatment of the offender, that may promote more long-term and effective societal interventions in stopping the violence than the incarceration of the offender; and
- provide victims with a greater voice in the response through opportunities to actively participate in the process.

Opposition to the Use of Alternative Measures and Restorative Justice Processes in Spousal Abuse Cases

The genesis for much of the concern with the use of alternative justice responses in spousal abuse cases is the special and peculiar dynamic inherent in spousal abuse cases as well as the justice system's historical response to these cases.

Those who oppose the diversion of spousal abuse cases to Alternative Measures processes or the referral of spousal abuse cases to restorative justice processes generally do so in the belief that:

- the traditional criminal justice process is better able to ensure the safety of the victim throughout and after the process and less likely to re-victimize the victim;
- the availability of such alternative justice responses may expose the victim to an increased risk of being pressured by the offender (and others) or of further abuse by the offender unless she agrees to the diversion or to participate in it;
- diversion to any process outside the traditional criminal justice process is inconsistent with the objective of ensuring that spousal abuse is publicly and formally denounced as a criminal act;

- victims may be less likely to report spousal abuse where alternative justice responses are seen by victims as the primary or probable response to their case and they view this response as less serious than the traditional justice response;

- referral to alternative justice responses, without the laying of a charge, is contrary to and undermines the existing pro-charge policy and, as such, represents a significant step backwards towards "re-privatizing" spousal abuse;

- alternative justice processes, particularly restorative justices processes, are less transparent than the traditional criminal justice system; and

- there is inadequate evidence-based research to demonstrate the effectiveness of Alternative Measures or restorative justice responses or of their sensitivity to the needs of spousal abuse victims.

iii) Conclusions

The Working Group acknowledges the need to continue to strengthen the existing criminal justice system's response to spousal abuse cases, as well as to continue to explore opportunities to develop new, effective alternative justice responses. However, in considering new alternative justice responses, it is imperative to understand both the dynamics of spousal abuse as well as the successes and failures of the traditional justice response.

There is reason to be encouraged by some of the early, positive anecdotal experiences with alternative processes in addressing other types of criminal conduct. However, there is a paucity of evidence-based research to not only substantiate the effectiveness of these alternative responses with respect to spousal abuse cases, including ensuring the safety and security of the spousal abuse victim and her children, but also to assess these responses vis-à-vis the traditional system's response.

iv) Recommendations

The majority of the Working Group recommends against the use of alternative justice processes in spousal abuse cases except in the following circumstances:

i. the referral to the alternative justice process is made *post-charge on Crown approval*;

ii. trained and qualified personnel, using validated risk assessment tools, determine that the case is not high-risk (in other words, if after a consideration of a variety of factors, including any history of violence, threats of serious violence, prior breaches of protective court orders, the use or presence of weapons, employment problems, substance abuse and suicide threats, the offender is assessed to be at low risk of re-offending and therefore of low risk of harm to the victim's safety, as well as that of her children and other dependents, both throughout and after the process);[110]

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[110] See, for example, a similar listing of risk factors that should be considered in British Columbia Ministry of Attorney General, *Crown Counsel Spousal Assault Policy* (Discussion Paper) (July 2002) at 5.

iii. the alternative justice process offers the same or greater measure of protection of the victim's safety as does the traditional criminal justice process;

iv. the victim is fully informed of the proposed alternative justice process and her wishes are taken into consideration. In addition, victim consent is required and victim support must be provided where the victim will be asked to participate in the alternative justice process;

v. the offender fully accepts responsibility for his action;

vi. the alternative justice process is part of a program approved by the Attorney General[111] for the purpose of providing alternative justice responses to spousal abuse and is overseen by the Attorney General or the court;

vii. the alternative justice process is transparent (that is, it maintains formal records of the actions taken by those engaged in the process) and it is undertaken in a timely and reasonable manner;

viii. the alternative justice process has the capacity to deal with spousal abuse cases and is delivered and supervised by persons possessing the requisite skill, training and capacity, including the ability to recognize and address any power imbalances, as well as cultural differences; and

ix. the possibility of criminal conviction and sentence remains if the process fails.

The Working Group also recommends that approval of the use of alternative justice processes in spousal abuse cases needs to be supported by the following:

- the development and delivery of ongoing training and education for those involved in conducting risk assessment and the delivery and supervision of the alternative justice processes and programs, including criminal justice personnel;

- the development and application of validated risk assessment tools for spousal abuse cases; and

- ongoing assessment and evaluation of alternative justice responses, including of those used in spousal abuse cases, against new evidence-based research on the effectiveness of these processes, their ability to ensure the safety of the victim and her children, and their ability to reduce the likelihood of re-offending.

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[111] To be further defined and accord with subsection 717(1)(a) of the *Criminal Code*: "…or the Attorney General's delegate or authorized by a person or person within a class of persons, designated by the lieutenant governor in council of a province."

Working Group Minority Positions:

- British Columbia and Prince Edward Island only allow the diversion of spousal abuse cases to Alternative Measures programs established pursuant to the *Criminal Code*, at either the pre- or post-charge stage, on Crown approval.

Quebec does not have any official Alternative Measures programs and, accordingly, takes no position on the use of these programs in spousal abuse cases.

SECTION II: STRUCTURES AND MODELS

1) CO-ORDINATING MECHANISMS

i) Research and Best Practices

Reforms to improve society's response to spousal abuse have included a number of components: development and implementation of pro-charge and pro-prosecution policies; training programs for criminal justice professionals; support and advocacy for victims; court-mandated programs for batterers; and public education initiatives aimed at conveying the message that family violence is unacceptable.

It is widely acknowledged that because of the nature and complexity of spousal abuse, legal controls or sanctions alone are not a sufficient response to these behaviours. A number of studies have concluded that formal (legal) sanctions are more effective when reinforced by informal social controls and are weakened when those controls are absent.[1] Similarly, evaluations of extra-legal responses (such as victim support programs and batterers programs) independent of other community context have produced mixed results.

Concerns about the fragmentation of the response to domestic violence and the absence of a shared vision and public accountability have led to the development of co-ordinated community responses.

Community intervention projects are advocacy projects, external to the criminal justice system and operated by non-profit agencies, that focus on improving and co-ordinating institutional responses to domestic violence within a community by doing the following:

- creating a common philosophical approach that centralizes victim safety;
- establishing consistent policies and protocols for intervening agencies;
- enhancing networking among service providers;
- building monitoring and tracking systems that strengthen system accountability;
- speaking out for battered women within the criminal justice system and within the broader community to ensure a supporting infrastructure;
- providing sanctions and rehabilitation opportunities for abusers;
- undoing the harm violence to women does to children; and

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[1] Jeffrey Fagan, *The Criminalization of Domestic Violence: Promises and Limits* (NIJ Research Report) (January 1996).

- evaluating the co-ordinated community response for victim safety and offender accountability.[2]

The Quincy District Court in Massachusetts and the San Francisco Family Violence Project are examples of reform projects based on the criminal justice system. Components of the model include pro-arrest and pro-prosecution policies; closely supervised probation that includes batterer treatment; use of restraining orders; victim advocacy; training; prevention activities; and public policy reform.[3]

Co-ordinating councils provide a forum for interagency co-ordination and can include representatives from community organizations, government and criminal justice agencies. The San Diego Domestic Violence Council, for example, has representatives from more than 200 agencies that provide services to victims and offenders.[4] State-wide co-ordinating councils play an important role in the response to domestic violence through assessment of the legal justice and social systems involved, policy development and planning.

Research on the impact of co-ordinated community responses has produced some promising results. Significant increases in arrests, in successful prosecutions and in the number of men ordered to counselling were reported following the initiation of three community intervention projects in the United States.[5] Adoption of a domestic violence protocol that included a pro-arrest policy, proactive prosecution, victim advocacy and sentencing guidelines that included mandatory treatment for batterers resulted in a significant decrease in recidivism that was maintained over an 18-month follow-up period.

Evaluation data in Canada suggest that an integrated strategy has a positive impact on criminal justice system performance. In Nova Scotia, data comparing the performance of the criminal justice system before and after the introduction of a pro-charge, pro-prosecution policy framework (which included training and accountability measures) demonstrated significant improvement in key performance indicators such as charge, arrest and conviction rates.[6] In Quebec, efforts to enhance integration and co-ordination throughout the criminal justice process include verifying the consistency of conditions imposed on violent spouses at various stages of the judicial and correctional systems. This verification is conducted by the Correctional Services of Quebec.

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[2] Kristin Littel, *et al.*, *Assessing the Justice System Response to Violence Against Women: A Tool for Communities to Develop Coordinated Responses* (Minnesota Centre Against Violence and Abuse, 1998) at 14-17, also at (http://www.vaw.umn.edu/Promise/PP3.htm).

[3] Sandra J. Clark, *et al.*, *Coordinated Community Responses to Domestic Violence in Six Communities: Beyond the Justice System* (Urban Institute, 1996) (http://www.urban.org/crime/ccr96.htm); E. Buzawa and C. Buzawa, *Do Arrests and Restraining Orders Work?* (Thousand Oaks, London, New Delhi: SAGE Publications Inc., 1996).

[4] Melanie Shepard, *Evaluating Coordinated Community Responses to Domestic Violence* (Minnesota Centre Against Violence and Abuse, 1999) (Violence Against Women Online Resources, www.vaw.umn.edu/Vawnet/ccr.htm).

[5] D. Gamache, J. Edleson and M. Schock, "Coordinated police, judicial and social service response to woman battering: A multi-baseline evaluation across three communities" in G.T. Hotaling, D. Finkelhor, J. Kirkpatrick and M. Straus, eds, *Coping with Family Violence: Research and Policy Perspectives* (Newbury Park: SAGE, 1988).

[6] Nova Scotia Department of Justice, *Framework for Action Against Family Violence: A Review* by K.M. Waters (1999)

ii) Co-ordinating Mechanisms in Canadian Jurisdictions

One of the earliest models of co-ordination was implemented in London, Ontario, where the first research studies on the impact of charge and arrest policies in Canadian jurisdictions were carried out. Most Canadian jurisdictions have now implemented some form of local and provincial co-ordinating mechanisms to address domestic violence through interdepartmental committees, local interagency committees or both. A cross-jurisdictional overview of co-ordinating structures is provided in section VI of this Report.

A number of jurisdictions have signalled commitment to the issue of family violence at the highest level of government, establishing, for example, the Premier's Action Committee on Family Violence Prevention (Prince Edward Island), the Committee of Ministers (Newfoundland and Labrador), the Inter-Ministerial Co-ordinating Committee on Spousal, Family and Sexual Violence (Quebec), and the Ministers' Working Group on Violence Against Women (New Brunswick). Most jurisdictions have constituted interdepartmental committees, composed of senior government (and sometimes community) representatives to promote a multi-disciplinary approach to domestic violence. The effectiveness of these structures varies according to the strength of the links among departments and the priority such initiatives are given within the overall context of government programs.

In some cases, special short-term structures are established to provide advice on the implementation of new programs or strategies. For example, the Joint Interministerial Committee on Domestic Violence in Ontario completed its five-year report and provided advice on a provincial strategy to respond to domestic violence. The Domestic Violence Justice Strategy established an interministerial group of staff officials to oversee some of the recommendations. Following implementation, the short-term structures may be incorporated into program areas to continue the co-ordination.

In some jurisdictions, a specific office has been created to provide leadership and serve as a focal point for co-ordination of family violence activities. Alberta, for example, established an Office for the Prevention of Family Violence in 1984, the first of its kind in Canada. Until 2000, Nova Scotia maintained an interdepartmental, multi-disciplinary Family Violence Prevention Initiative with a full-time co-ordinator, but this was disbanded as a result of budget restraint. The model included departmental family violence committees, a government-community co-ordinating committee, local interagency co-ordinating committees, and the Deputy Ministers Committee on Social Policy to which the initiative reported in an effort to co-ordinate policy across sectoral boundaries. In Ontario, the Victim Services Division within the Ministry of the Attorney General not only integrates victim services from various justice ministries, but also co-ordinates the government's Domestic Violence Justice Strategy and its related programs. New Brunswick has established within its Executive Office a Women's Issues Branch, which co-ordinates the response of the government to 59 recommendations by the Ministers' Working Group on Violence Against Women.

In most jurisdictions, regional or local committees have been established, generally with representation from the criminal justice system and community organizations and sometimes with representatives from other disciplines, such as education, social services and health. These committees promote the implementation of a co-ordinated community response.

iii) Elements of an Effective Response

In her review of the existing co-ordinating mechanisms in provincial and territorial jurisdictions, Carolyn Marshall offers the following observations:

> Coordination needs to happen at all levels to be effective. It also takes staff to do the work and a commitment of resources to carry out activities. These (coordinating) bodies need a mandate to coordinate, [one] that is supported by real commitment at the top and that is enforceable. Partnership is a very time-consuming process, but no more so than the resources spent on uncoordinated policies, programs and service delivery systems. Coordination is difficult in part because it operates, by definition, across professional disciplines and departmental boundaries, and outside line authority. Typically the coordination function comes with responsibility but is not supported by the authority to make it happen. Accountability mechanisms tend to be weak if not supported by the senior management of multiple departments/stakeholders. When coordination works, it is in spite of this and is usually the product of partnership and trust-building effort.[7]

This insight into the need to support responsibility with the authority to make it happen speaks to the need for long-term sustainability and senior management commitment. These are inseparable and fundamental.

An effective co-ordinated response requires leadership and a focal point of co-ordination of government family violence initiatives, along with the following:

- authority to shape policy development to achieve a co-ordinated and consistent policy framework among a variety of departments;
- representation by all affected departments at senior levels from people with the ability to influence departmental policy and who have access to the Deputy Minister;
- resources to implement a co-ordinated policy framework;
- an accountability framework with mechanisms to track and report on progress;
- some form of representation and involvement of, or partnership with, community stakeholders with parties' roles clearly defined;
- processes to enhance relationship-building at all levels among all players and to promote a sense of partnership and a shared vision based on a common understanding of the problem;
- encouragement of local intersectoral committees;
- support of government staff working at the local level to implement provincial or territorial policy and to participate meaningfully in interagency forums to create positive working relationships and solutions to problems identified; and

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[7] Nova Scotia Department of Justice, *Nova Scotia Family Violence Framework for Action Review: Interjurisdictional Comparison and Literature Review* by Carolyn Marshall (2001) at 55.

- some joint case management function across agencies to develop co-ordinated case plans for individual families where abuse is a concern (that is, protocols governing the exchange of information and service provision: and roles and ways of working together).

Co-ordination needs to occur across policy sectors (social, justice, education and health) and at all levels within each jurisdiction: at the provincial level (to establish a policy framework); at the local community level (to co-ordinate services and to identify needs, gaps and solutions); and at the individual level (to provide effective case management and conferencing mechanisms).

iv) Challenges

There is increasing recognition that a co-ordinated response is required—one that integrates criminal justice, social service, mental health and community responses.[8] The fact that this goal has been difficult to achieve is not surprising. For one thing, criminal justice institutions are asked to make links to social services agencies in domestic violence cases that they are not asked to make in other types of crimes. Traditionally, the overriding objective of the criminal justice system has been the detection and sanction of perpetrators of crime. Reforms that address empowerment and support of victims have challenged the legal system's culture, processes and priorities. The ambiguity of goals can cause difficulty at the operational level for police and the Crown.[9]

The challenge to jurisdictions in adopting models of co-ordination is to create an effective model and vest it with sufficient authority and support to ensure that large and unwieldy systems co-ordinate their responses. Jurisdictions should be under no illusion that co-ordination and partnership are easy. They are time consuming and different philosophical frameworks and departmental priorities augment the challenges. Most difficult, however, is the challenge of ensuring a sustainable response to spousal abuse in the absence of an overall co-ordinated structure or model.

v) Recommendations

Specific initiatives will continue to have limited impact without a co-ordinated and consistent broad-based policy response across sectors. It is recognized that the justice system cannot, and should not, address this problem on its own. Uncoordinated efforts will continue to result in waste of scarce resources, duplication of effort, disillusionment of staff working within systems, unmet public expectations and, most detrimentally, compromised victim protection. The lack of co-ordination undermines the capacity of the justice system and other relevant social, health and education services to prevent and respond to family violence. An integrated, holistic, co-ordinated response with a shared vision is the most promising means of producing a synergistic effect and an overall reduction of violent behaviour.

Co-ordination and Intersectoral Collaboration

It is recommended that jurisdictions support and strengthen, with senior level commitment, co-ordination of initiatives to respond to family violence within and outside departments of justice that include multiple government and community stakeholders. Models of co-ordination may differ among jurisdictions but should incorporate the key elements of an effective response identified above.

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[8] Department of the Solicitor General Canada, *An Overview of Corrections Research and Development Projects on Family Violence* by Karen Myers (1996) at 15.

[9] Fagan, *supra* 1 at 32.

2) DOMESTIC VIOLENCE COURTS

i) Research and Best Practices

Domestic violence cases differ in many important respects from those involving extrafamilial violence, as has been noted above. Many observers, internal and external to the criminal justice system, argue that the response by police, prosecutors and the judiciary has been inadequate to meet the needs of the victims in these cases. The criminal justice system has traditionally been focussed on incidents occurring between strangers and, not surprisingly, the introduction of family relationships into this traditional paradigm poses challenges. Of these challenges, observers cite the high proportion of recanting and reluctant victims/witnesses and the ambiguous impacts of dispositions on perpetrators and victims. Further, in some jurisdictions there is a concern that systemic pressure on the courts prevents a thorough hearing of domestic violence cases.

Domestic violence courts have been established to permit a focus on the special nature of these cases by court officials who have an understanding of the dynamics of spousal abuse. Systems or protocols have been developed to support co-ordination within the justice process and beyond in a way that addresses the dynamics of domestic violence within a context of specially tailored court case management strategies.

In Canada, a number of jurisdictions have implemented specialized courts or court processes to handle cases of spousal/partner violence.[10]

ii) Winnipeg Family Violence Court

In 1990, Manitoba established the first specialized family violence court in Winnipeg. The five components of the court are:

1. a "zero-tolerance" pro-arrest policy;
2. a women's advocacy and child victim/witness program for victims of family violence;
3. a specialized prosecutorial unit of 11 Crown Prosecutors;
4. specially designed courtrooms and dockets for intake, screening court and trials; and
5. a special probation unit to deliver court/mandated treatment programs.

The three goals of the court are to expedite court processing, to increase victim co-operation and reduce case attrition, and to provide appropriate sentencing that would protect victims, such as treatment for abusers and offender monitoring through probation supervision.[11] There is evidence to suggest the court has had some success with two of these goals. Court processing time averaged three months despite significant increases in case volumes. Regarding sentencing, the number of cases resulting in probation supervision tripled and those resulting in jail sentences doubled, while fines and conditional sentences declined in the first two years of operation. Court-mandated treatment (for abusive behaviour) was a condition for about 25 percent of all persons sentenced in the court.

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[10] Although Quebec does not have a specialized spousal violence court, criminal justice officials may nonetheless rely on the Evaluation service, established by Correctional Services of Quebec, for judicial interim release of violent spouses. This service provides clarification for the courts by providing an evaluation of the accused, by recommending applicable conditions for the accused and, where needed, by referring the accused to specialized assistance services.

During the first four years of operation, the number of spousal abuse cases rose dramatically (there was a 229 percent increase from 1989 to 1993-94) but it has since levelled off. The stay rate increased significantly from 22 percent in the first year of operation to 46 percent in 1997. This increase has been attributed to the shift in discretion from police to the Crown in determining whether a case proceeds, as well as to Crown policy, which, while emphasizing vigorous prosecution, permits the Crown not to proceed "at the expense of the victim." In an evaluation of the specialized court, the evaluator argued that "this dual and contradictory mandate comes closer to reflecting the complex nature of domestic violence than the older, simplistic standard that equates success with conviction."[12] It is suggested that it may take victims several contacts with the justice system before they are ready to testify and view the courts as a resource. Others are troubled by the high stay rate in that the offender is not held accountable for his behaviour (in that he does not have a criminal record) and is not obliged to undergo treatment.[13]

iii) Ontario Domestic Violence Courts Program

Ontario has introduced a comprehensive, province-wide Domestic Violence Justice Strategy in response to the May-Iles Inquest and the 1999 recommendations of the Joint Committee on Domestic Violence.

In early 1997, Ontario began piloting two specialized courts for domestic violence cases in Toronto: one in North York (an early intervention model) and one in downtown Toronto (a co-ordinated prosecution model). In 1997-98, these pilots were expanded to six other sites, and then the models were combined in all sites. The four objectives of these courts are to intervene early in domestic violence situations; to provide better support to victims throughout the criminal justice process; to more effectively prosecute these cases; and to hold offenders accountable for their behaviour.

The approach reflected in the two models is now being combined in 16 large centres that are implementing this specialized court process:

- an early intervention stream (which emphasizes early access to treatment) for offenders who have no prior convictions for domestic violence, who did not use a weapon in the commission of the offence; and who caused no significant harm to the victim; and

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[11] Jane Ursel, "The Winnipeg Family Violence Court" in M. Valverde, L. MacLeod and K. Johnson eds., *Wife Assault and the Canadian Criminal Justice System: Issues and Policies* (Toronto: University of Toronto, 1995).

[12] Statistics Canada (Canadian Centre for Justice Statistics). Ursel, Jane, "Winnipeg Family Violence Court Report" in *Family Violence in Canada: A Statistical Profile 2000*, (2000).

[13] Nova Scotia Department of Justice, *supra* note 7.

- a co-ordinated prosecution stream, which emphasizes the gathering of solid evidence to support a vigorous prosecution.

The former, often used in situations where the victim and offender wish to reconcile, permits the accused to plead guilty and, as a condition of bail, be ordered to attend a Partner Assault Response (PAR) program. A specialized Crown Prosecutor does the screening. The Victim/Witness Assistance Program consults with the victim and provides information and referrals to community resources. On completion by the offender, the PAR program provides a report to the Crown. If satisfactory, that report can be considered as a mitigating factor in sentencing. The Crown usually recommends a conditional discharge. If the accused does not successfully complete the program, bail conditions are considered to have been breached, and the individual can be processed by the prosecution stream.

The co-ordinated prosecution stream focuses on the collection of corroborating evidence, in addition to victim testimony (such as 9-1-1 tapes, photos of injuries or damage, medical reports, witness testimony, and audio or videotaped victim statements).

As of February 2000, approximately 4,500 individuals had been processed through these courts: 76 percent in the prosecution sites and 24 percent in the early intervention sites. Of these cases, 69 percent resulted in a guilty disposition (72 percent at the early intervention sites and 68 percent at the prosecution sites). Overall, 22 percent of the cases were withdrawn.[14]

Moyer and Associates evaluated the initial 16 to 18 months of the Domestic Violence Courts (DVC) Program.[15] DVC cases in six DVC sites were compared to matched sample cases handled in the same six sites in the pre-project period.[16] In addition, victims of domestic violence in Kingston and Barrie were interviewed to determine whether or not the services provided and attitudes of victims in these sites differed from those in the DVC sites. The evaluators caution that their findings were a snapshot of the early functioning of the models and may not be representative of the longer term operation of the courts.

At each site, more evidence of some type was gathered and respondents agreed that police investigations had improved, at least to some degree. In the majority of sites, case processing times decreased significantly. As all participants in the early intervention programs pleaded guilty, the proportion of guilty pleas increased significantly in these sites compared to the pre-project period. Results were mixed in the co-ordinated prosecution sites. Although there had been an expectation that a greater proportion of offenders would be referred to specialized programs for abusers, no definitive evidence of this emerged.

The majority of victims in the early intervention sites met with or had been contacted by the Crown or the Victim/Witness Assistance Program (VWAP) soon after the incident. In the co-ordinated prosecution sites, victims did not report being any better prepared to testify than victims in the comparison sites. However, 60 percent who testified said they had been sufficiently prepared. Victims in the early intervention sites were significantly more likely to be satisfied with case outcomes than were other victims (80 percent reported satisfaction). For the most part, these victims were pleased that their abusers would receive counselling but not the stigma of a criminal record. In the co-ordinated prosecution sites, victim satisfaction with case outcome ranged from 42 percent to 64 percent. There were few differences in victims feelings of fair treatment, support and safety between project victims and those in comparison sites. Most victims in all sites believed they had been treated fairly and had received adequate support.

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[14] Statistics Canada, (2000) *supra* note 12 at 48.

[15] Ontario Ministry of the Attorney General, *The Evaluation of the Domestic Violence Courts: Their Functioning and Effects in the First Eighteen Months of Operation, 1998-1999* by Sharon Moyer *et al.* (2000).

[16] The early intervention (EI) model was piloted in three sites (Peel, Durham and North Bay) and the coordinated prosecution (CP) model in the other three sites (Ottawa, London and Hamilton).

Overall, there were fewer referrals to the early intervention projects than expected. Evaluators hypothesize that there was little incentive to participate because first offenders typically received a conditional discharge before the project was implemented and 50 percent had charges withdrawn, stayed or dismissed. In the co-ordinated prosecution sites, there were concerns that the continuity of Crown Prosecutors from initiation to completion of a case was not as steady as anticipated. Referral rates to abusive partner treatment programs were less than anticipated and completion rates ranged from 54 percent to 91 percent.

The need for increased resources for the justice system components and community agencies offering services to victims and perpetrators was noted, as was the need for more training. The evaluators recommended improved co-ordination among all sectors of the justice system responding to domestic violence, from the earliest planning stages of the DVCs and throughout implementation. The need was noted for enhanced accountability mechanisms to monitor the behaviour of perpetrators and ensure victim safety.

Since the submission of the Moyer report, many of the findings and recommendations have been addressed as the Domestic Violence Court Program continues to roll out DVCs across the rest of Ontario.

The justice ministries of Ontario established an Assistant Deputy Minister Provincial Oversight Committee to facilitate intersectoral problem-solving; increased resources for Crown Prosecutors, VWAPs and PAR programs; a training plan for all components of the justice system and justice partners; enhanced policies and procedures; and a blending of the best elements of the early intervention and co-ordinated prosecution models to form a single program model.

To date, 20 sites have implemented a specialized DVC process. Ontario has committed to expanding this specialized process on a province-wide basis. All 54 court jurisdictions will have either a specialized court with designated staff to handle domestic violence cases or a specialized process for doing so. Regardless of size, all jurisdictions will have a specialized process with the following components:

- an active advisory committee to support the work of the specialized DVC process (a Domestic Violence Court Advisory Committee, or DVCAC);
- interpreters (to help non-English and non-French speakers communicate with police, Crown Prosecutors and victim support staff);
- enhanced investigative procedures for police (including use of a risk indicator tool);

- designated VWAP staff specially trained to give support and information to victims;
- designated Crown Prosecutors specially trained in prosecuting domestic violence cases, to produce consistency and continuity;
- specialized counselling programs for abusive partners; and
- specialized processing to expedite cases and ensure co-ordination of services.

In medium-sized and small rural sites, these components may be implemented differently based on the volume of cases and the size of the jurisdiction. For example, rather than designated staff or a dedicated courtroom, specially trained staff may be available.

iv) Yukon Domestic Violence Treatment Option

The Domestic Violence Treatment Option (DVTO) of the Yukon Territorial Court was established in 2000. The goals of the program are to encourage more disclosures of domestic violence; to provide for early interventions; to hold offenders accountable in a meaningful way; to reduce the high collapse rate of court cases; to provide a treatment option to offenders under the close supervision of the court and treatment professionals; and to protect and support complainants.

Operation of the DVTO is based on the following principles:

- family violence is a learned behaviour that can be changed;
- offenders need to take responsibility for their actions and to be held accountable as they are being supported with counselling;
- early intervention by a multi-disciplinary team is essential;
- initial and ongoing support must be offered to victims and their families; and
- community-based programs, counselling and supervision are more effective than incarceration in treating this type of behaviour.

The DVTO sitting occurs one afternoon every other week: Following the laying of a charge for a domestic violence offence, if the accused accepts responsibility, he or she can apply to participate in the DVTO. The case is adjourned for two weeks so that Spousal Assault Program (SAP) counsellors can complete an assessment. If the accused is accepted for SAP counselling and chooses to proceed through the DVTO court, the individual enters a formal plea of guilty. If the court so orders, the individual then enters the treatment program (which may include alcohol and substance abuse treatment). If ineligible, the individual returns to the formal court system. Repeat offenders are eligible to participate.

During the treatment period, the individual is brought before the court every month for a progress report. The report to the court also includes information from the victim. After the individual completes the SAP, the counsellor submits a written report on progress to the accused, defence counsel, the Crown and the court. The sentencing judge reviews the report and imposes a sentence, which reflects the offender's progress and addresses future counselling, relapse prevention and safety issues.

Resource people, such as probation officers, SAP counsellors and Victim Services staff, regularly attend the DVTO court to provide assistance. Victims receive support in the form of assistance with safety planning; referrals for counselling for themselves and their children; updates on the offender's progress; court accompaniment; and assistance in preparing victim impact statements.

Officials involved in the DVTO Program believe it is effective because cases are processed quickly and perpetrators are admitted to programs at an early stage. The program provides for ongoing monitoring and accountability to the court and to the victim. Although the process is judge-driven, a steering committee (with representatives from community groups and justice professionals) provides ongoing program input. A three-year evaluation process is underway.

Some concern has been expressed regarding the delay in sentencing of up to one year pending completion of a treatment program, in light of section 720 of the *Criminal Code*.[17] This issue is currently under review by the FPT Working Group on Sentencing.

v) Calgary Domestic Violence Courtroom

In June 2000, the Calgary Domestic Violence Courtroom, now known as HomeFront, was established as part of a four-year pilot project.[18] The court sits every morning and functions as a docket court; trials are scheduled in other courtrooms. The goal of the initiative is to reduce domestic violence, while linking the victim and offender more quickly and effectively with specialized services.

A pre-court conference brings together the Crown, the defence, probation officers, domestic court caseworkers and police to co-ordinate relevant information to be brought before the court. Front-line police officers and the Domestic Conflict Unit of the Calgary police conduct risk assessments. Domestic court caseworkers initiate contact with the victim immediately following the accused's arrest and offer a continuum of support services, including information about case status and notification of changes; court accompaniment; communication of the victim's perspective in the pre-court conference; information about risk assessment and safety planning; and referral to community resources. A specialized Community Corrections Probation Unit monitors those on probation in approximately 75 percent to 80 percent of cases, focussing on victim safety and offender accountability. Emphasis is placed on early access (within 48 hours) to court-ordered treatment and increased availability of culturally appropriate programs.

Protocols have been developed with 52 agencies, including hospitals, shelters, Aboriginal organizations, and child welfare agencies (a referral is made in each case where children are involved).

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[17] Section 720 provides that the court shall, as soon as practicable after an offender has been found guilty, conduct proceedings to determine the appropriate sentence to be imposed. This section is currently being reviewed by the FPT Working Group on Sentencing.

[18] In addition to the Calgary Domestic Violence Courtroom, a specialized courtroom was subsequently established in Edmonton in January 2002.

There have been some deviations from the original plan. It was intended that two judges be dedicated to the court, for six-month rotations. This was abandoned early in the project and judges now appear randomly in the courtroom. The workload for probation staff who monitor offender compliance has been greater than expected and it has not been possible to assign a dedicated probation officer.

Co-ordinators of the initiative maintain that the court itself constitutes a small part of the program and that the key element is the strong link between the legal system and the broad spectrum of social services within the community. The initiative has engaged the community as a whole and has even received donations from the corporate sector.

Of the 140 cases resolved in May-June 2001, the accused pleaded guilty in 19 percent, 34 percent were resolved by peace bond, and the accused pleaded not guilty in 46 percent (these latter cases proceeded to trial). The top five dispositions in the Calgary court were peace bond (66 percent), supervised probation (22 percent), withdrawal (15 percent), suspended sentence (12 percent) and incarceration (11 percent). Among probation and peace bond conditions, offender treatment was most frequent at 86 percent. No contact with the victim was a condition in 18 percent of the cases. Domestic court caseworkers were not able to contact 34 percent of the adult victims, and only 10 percent were contacted before trial. This fact undoubtedly had an impact on court disposition. Domestic court caseworkers referred victims to a variety of services, mostly shelters (HomeFront Output Pilot results and fact sheet).

A fact sheet notes that, in the period from the court's opening on May 29, 2000, to April 19, 2002, the number of charges laid, probation orders and mandated treatments increased substantially. Domestic violence cases account for 40 percent to 50 percent of the probation caseload in Calgary. In this period, 62 percent of the cases were processed through the court, resulting in dispositions of peace bonds (39 percent of all cases) and guilty pleas (23 percent of all cases). A review of 878 probation (closed supervision) files revealed 171 (19 percent) of individuals on probation had breached their order.

Peace bonds are used in situations where it is perceived there is a low risk of someone re-offending and hence a low risk to the safety of the victim; where the offender is prepared to participate in counselling; and where the victim wishes to see a resolution that does not result in a criminal record for the accused and that permits possible reintegration of the family unit. In every case, the offender is required to accept responsibility for the offence. Most peace bonds include supervision by probation officers, together with conditions of treatment. Offenders who are subject to peace bonds are held to the same standards as those who are subject to probation orders, and breaches are dealt with by a charge pursuant to section 811 of the *Criminal Code*. Interim evaluation data show that individuals who enter into peace bonds display a low rate of recidivism and that such a disposition can usually be obtained early in proceedings, facilitating early entry into treatment.

Need for Ongoing Research and Evaluation

Each jurisdiction that has instituted a specialized court has started evaluating it to determine its impact. Unfortunately, pre-and post implementation data are largely absent or inadequate in many jurisdictions, making definitive comparisons difficult.

RESOLVE, a family violence research centre involving the three Prairie provinces, has received a $600,000 three-year grant from the Community and Universities Research Alliance to evaluate the justice and community response to family violence in those provinces. RESOLVE Alberta at the University of Calgary is the lead institution for this study. The research includes three major components: court data collection, comparison of provincial civil legislation and evaluation of community perspectives on the justice response. It involves comparing specialized court systems (in Winnipeg and Calgary) with non-specialized systems (in Edmonton, Saskatoon and Regina) to determine differences and similarities in variables such as conviction rates and increased enforcement of sentences; victim trust and participation; victim safety; services and referrals provided; and inter-agency communication and understanding. A Crown manual on case law in domestic violence will also be developed.

vi) Elements of an Effective Response

Specialized domestic violence courts have been established to improve the response of the justice system to incidents of spousal abuse or decreasing court processing time; increasing conviction rates; providing a focal point for programs and services for victims and offenders; and, in some cases, allowing for the specialization of police, Crown Prosecutors and the judiciary in domestic violence matters.

Based on the experience to date, it appears that the critical components of successful models are as follows:

- methods to expedite cases;
- sensitive, informed, appropriate service provided by trained justice professionals;
- co-ordination of justice system response (in policy and practice);
- co-ordination with a range of other service providers;
- early access to treatment by offenders (to capitalize on offender motivation to change and allow for a more immediate response);
- monitoring of offender compliance with meaningful sanctions to hold offenders accountable;
- access to support, information, and referral by victims; and
- monitoring and evaluation of systems to assess effectiveness, and to identify areas requiring change or improvement.

vii) Challenges

Establishing specialized domestic violence courts, or even specialized processes, in remote areas or in areas with low case volumes presents significant challenges. Frequently, auxiliary services, such as victim support and abusive partner intervention programs (which are critical to the success of the specialized courts) are simply not available in small communities.

Experience has shown the major challenge to be allocating the resources needed to dedicate the services of criminal justice personnel to spousal abuse cases, and to provide specialized programs for victims and offenders. In some jurisdictions, this problem is compounded by low case volume and difficulties in accessing central or even regional specialized courts with programs for victims and offenders.

There is evidence that dedicated courts do improve justice system performance. However, formally dedicated or specialized courts appear not to be the only means of improving the justice system response to domestic violence. The elements of the courts' response—what makes this response effective—can be exported and implemented in other ways, such as through specialized processes similar to those pursued in Ontario. The critical ingredients remain the same, whether the court is the focal point of co-ordination or whether there are dedicated judges, prosecutors and courtrooms. Case volume will likely determine the need for a dedicated courtroom or dedicated court time.

It appears the prime challenge facing jurisdictions is the need to implement a co-ordinated and consistent policy, practice and service response among all criminal justice system players (or specialized court and justice system processes), to ensure effective handling of domestic violence cases through a dedicated court or otherwise. The issues are the same as those related to co-ordination of domestic violence responses generally, as discussed earlier.

viii) Recommendations

Domestic violence courts and specialized criminal justice processing

It is recommended that jurisdictions continue to explore options to improve the handling of spousal/partner abuse cases through delivery of a co-ordinated justice system response, including specialized court processes, based on the critical elements identified above. The adoption of specialized structures and processes should be guided by research and evaluation being undertaken in Canada and elsewhere.

3) DOMESTIC VIOLENCE LEGISLATION

Seven jurisdictions have now passed civil (non-criminal) domestic violence legislation—Saskatchewan (1995), Prince Edward Island (1996), Yukon (November 1999), Manitoba (September 1999), Alberta (June 1999), Ontario (passed in 2000 but not proclaimed) and Nova Scotia (passed in 2001 but not yet proclaimed). New Brunswick, Quebec and the Northwest Territories are considering adopting such legislation.

i) Elements of the Legislation

Purpose and objectives

This legislation is intended to complement, not supplant, the *Criminal Code* process. Police are still to lay charges where reasonable grounds exist to do so. Civil domestic violence legislation provides a wider range of remedies than those currently available in the *Criminal Code* or in other provincial statutes.

Scope and definitions

Most provincial domestic violence legislation applies to cohabitants, family members or individuals who are living together in a family, spousal or intimate relationship and to persons who are parents of children, regardless of their marital status or whether they have lived together. Manitoba's legislation applies not only to victims of domestic violence, but to all persons subjected to stalking, regardless of the nature of the relationship between the victim and the stalker. While Ontario's legislation also makes specific references to behaviours typically involved in stalking, its application is only to those behaviours occurring within a defined domestic context.

Domestic violence is usually defined as including physical abuse, threats and damage to property (typically worded as "an act or threatened act causing bodily harm or injury or damage to property"); forcible confinement; or sexual abuse. Yukon's Act adds "depriving a person of food, clothing, medical attention, shelter, transportation or other necessaries of life," and both Prince Edward Island and Manitoba include emotional or psychological abuse. (Please consult the specific pieces of legislation for precise wording; this description is intended to provide a general overview only.)

Basic features and key provisions

The legislation has similar key provisions but with some differences. All but Nova Scotia's enable the granting of two types of orders—a short-term emergency intervention or protection order and a longer term victim assistance order, sometimes called a protection or prevention order. As a result of the low utilization of this latter provision in other jurisdictions, Nova Scotia did not adopt the longer term order, opting instead to enable extension of an existing order by 30 days. In Saskatchewan, Yukon and Alberta, a warrant of entry provision is also available.

The short-term orders are available 24 hours a day, either by telephone at the scene of an abuse incident or by appearance before a specially designated justice of the peace trained in family violence issues. All include remedies similar to the following:

- granting of exclusive occupation of the home to the victim;
- removing the respondent from the home;
- issuing a no contact/no communication order;
- ordering that the respondent cannot attend a specific place;
- sending a police officer to accompany the party removing personal belongings; and
- making any other provisions necessary to protect the victim.

Some legislation enumerates these "other provisions" more specifically, such as:

- ordering the respondent not to take, sell or damage property;
- ordering the respondent not to commit any further violent acts;

- granting possession of certain personal property (such as a motor vehicle, medical or credit cards, house keys);
- granting the victim temporary care and custody of the children;
- prohibiting the publication of the victim's name and address;
- seizing weapons and documents authorizing ownership, possession or control of a weapon;
- restraining the respondent from conduct that is threatening, annoying or harassing to the applicant; and
- restraining the respondent from following the applicant from place to place or from being within a specific distance.

The offence and penalty sections differ. Some acts include penalties and others use section 127 of the *Criminal Code* to govern breaches of orders made under the domestic violence legislation.

All emergency orders require automatic review by a superior court within three to seven days, except in Manitoba, where reverse onus is placed on the respondent to contest an order within 20 days of service of the order. In practical terms, this requirement significantly reduces the court's workload. As well, evaluations in other jurisdictions suggest that the emergency orders are rarely challenged by the respondent and are most often confirmed by the court on review.

ii) Perceived Benefits

The key benefits of the legislation are identified as follows:

- allowing victims and their children to remain in their home, attend work and go to school in their home communities, causing less disruption to the family and more appropriately placing the burden on the abuser to find alternate accommodation;
- including practical provisions that benefit the victim and children on an immediate basis, particularly exclusive occupation of the home and possession of personal property (such as the car and credit or bank cards) on a temporary basis, temporary care and custody of the children, and a specific prohibition against selling or damaging joint property;
- providing immediate protection for the victim; and
- sending an immediate message that the abuser's behaviour is not acceptable.

There is also the suggestion, from an evaluation of the impact of the Prince Edward Island legislation,[19] that such legislation may reduce recidivism in early stages of abusive relationships. The Prince Edward Island data indicate that 75 percent of women separate from their abuser following police intervention and issuance of an order.

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[19] Prince Edward Island, *PEI Victims of Family Violence Act: Final Evaluation Report* by Bradford and Associates (2001).

The legislation is reported to be relatively easy to administer from the perspective of police, as a request for an order requires only about 20 minutes of police time (in Saskatchewan and Alberta). However, streamlining of procedures was identified as an issue for police in Prince Edward Island.

iii) Elements of an Effective Response

The critical success factors are intensive training before the legislation is implemented; and public awareness and education sessions to inform victims and the public of the existence of the legislation and remedies available. Other factors cited include the use of a collaborative approach involving multiple departments and stakeholders. An adequate consultation process to solicit the support of the community, judiciary and others is also important for success.

Training of all sectors regarding the dynamics of family violence and in the *specific roles* of each component of the justice system is a critical success factor in the introduction of any new legislation. It has been the experience of jurisdictions that training must be ongoing, be updated to address emerging issues and concerns, and involve multiple community stakeholders. Saskatchewan cited its selection criteria for justices of the peace (JP) as a critical success factor in that candidates were chosen based on their family violence knowledge and expertise. They were not existing JPs trained in family violence, but rather family violence specialists trained in the legal process and the role of a JP. As well, they were representative of various linguistic groups and geographic (rural and isolated versus urban) areas of the province.

An iterative process must be instituted to address emerging concerns (such as differing interpretation and implementation issues) among players in the justice and non-justice sectors involved in providing services to family violence victims.

Monitoring and evaluation is also necessary to identify problems early and to intervene quickly and effectively to ensure the legislation is applied in the way it was intended.

iv) Issues and Concerns

The following is a list of commonly identified issues and concerns. A description of additional jurisdiction-specific issues can be found in the interjurisdictional comparison and literature review conducted by Carolyn Marshall.[20]

Utilization rates

Emergency orders are being used but longer term orders are not. This difference has been attributed to the fact that the process requires legal representation and legal aid resources are insufficient. Warrant of entry provisions are seldom used.

Although short-term emergency orders are being used, usage rates seem low compared to the number of incidents reported to the police. Manitoba has the highest usage rates, with about 1,100 orders issued in the first year of experience with the legislation, compared to 400 per year in neighbouring Saskatchewan, which has had legislation in effect for six years. The numbers of emergency orders issued on average per year in the other jurisdictions are 145 (Alberta), 28 (Prince Edward Island) and 30 (Yukon).

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[20] Nova Scotia Department of Justice, *supra* note 7.

In general, utilization rates are related to a number of factors, including the following:

- the philosophy and interpretation attached to the legislation by the various participants (that is, whether it should be used in conjunction with or instead of criminal charges; the definition of what constitutes an "emergency" and the conditions under which it is appropriate to use the legislation), and the degree to which this understanding is shared by players involved in providing services to victims;
- whether training has been provided, to whom it has been provided, and the quality and content of the training;
- the degree of awareness among the public and victims of the remedies available under civil legislation; and
- the time required to process the application for a short-term emergency order.

In addition to these factors, Yukon attributes its low usage rate to poor socio-economic conditions, substance abuse, ethno-cultural divisions and the lack of program alternatives in the North. It is widely believed that abused women have to leave their communities to be safe.

In summary, evaluation results indicate that short-term orders are more readily used than longer term orders are, but not in numbers even closely approximating the number of domestic violence cases reported to police. More work is needed to understand why this might be the case. Jurisdictional studies have offered partial explanations—more police training is needed to ensure officers are aware of the legislation and promote its use; justice players need to develop a common understanding of the situations in which it is appropriate to use this remedy, particularly in conjunction with the *Criminal Code*; and more public education is needed to inform victims of this potential remedy.

Victims are highly supportive of this legislation in jurisdictions where it exists.[21] Evaluations show that victims appreciate the immediacy of protection and the practical remedies of exclusive occupation of the home and temporary care and custody of the children.

Constitutionality

When this legislation was first introduced in provincial jurisdictions, there was some concern that it would be ruled unconstitutional and *ultra vires*. A challenge is currently before the Manitoba courts and the accused has filed a Notice of Appeal in the Manitoba Court of Appeal. Although the accused lost his motion and was convicted, an appeal is anticipated. There has been only one other court challenge to this legislation, in Prince Edward Island. In that challenge, the inclusion of emotional abuse in the definition of family violence was contested (but found by the court not to be overbroad), and the ability of the province to legislate and provisions regarding notice to the respondent were challenged. The court ruled the legislation was within the competence of the provincial legislature but found the notice provisions to be insufficient. These were amended in 1998.

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[21] Howard Research, *Implementation and Impact of the Protection Against Family Violence Act: Final Report*, Alberta, 2000; Bradford and Associates, *Final Report: Victims of Family Violence Act Monitoring Study*, Prince Edward Island, 1998; Prairie Research Associates, *Review of the Saskatchewan Victims of Domestic Violence Act*, Department of Justice Canada, WD1996-6e, 1996; Prairie Research Associates, *A Further Review of the Saskatchewan Victims of Domestic Violence Act*, Department of Justice Canada, WD199-1e, 1999.

Relationship to Criminal Code

Other concerns related to whether this legislation would be used as a substitute for criminal charges, although it was introduced to complement the *Criminal Code*. There is some evidence to suggest that substitution may be happening to some degree as police cite victim reluctance to pursue criminal charges as one reason for using civil legislation.[22] There is also evidence to suggest that the legislation is being used in cases where evidence would be insufficient to warrant criminal charges.[23] Generally, however, it appears this legislation is used as an adjunct to *Criminal Code* charges. Jurisdictions must continue to be vigilant in both monitoring the use of this legislation and implementing measures on an ongoing basis (through training, policy and practice memoranda, and good leadership) to ensure it does not replace criminal charges.

Application of legislation to reserves or settlement land

Other issues include the applicability of the legislation to real property on reserve or settlement land, specifically the granting of exclusive occupation of the home to the victim. In regard to reserves, the use, occupation and possession of real property are subject to specific provisions of the *Indian Act* (for example sections 20, 24, 28, 49 and 50 of the *Indian Act*, R.S.1985, c. I-5). While some bands on reserves may have adopted bylaws or custom laws granting exclusive possession of the home to victims of family violence, the legality of these laws has been questioned. In cases where bands have settled land claim agreements, and depending on the negotiated agreement, it is possible for them to obtain jurisdiction in relation to family violence. They may either pass their own laws or incorporate provincial laws by reference.

Scope of inclusion

In some jurisdictions, the legislation is sufficiently broad to include individuals in addition to spouses/intimate partners, such as children of a spousal abuse victim, elders or others unable to protect themselves. Most jurisdictions include protection for same-sex couples. In Saskatchewan, the results of two evaluations indicated that, while emergency intervention orders were being effectively used for spousal abuse situations, very few were used for children, elderly parents or other cohabitants experiencing abuse. In Alberta, training has been conducted with child welfare workers on the use of the legislation in child abuse situations.

Tracking and enforcement of protection orders and breaches

Breaches of emergency orders are dealt with by jurisdictions either as a breach of section 127 of the *Criminal Code* or as a specific offence set out in the legislation. Tracking of breaches has proved difficult for most jurisdictions as these orders are not distinguished from other *Criminal Code* section 127 offences. This fact means that it is currently not possible to determine the impact that these orders have had on reducing or eliminating incidents or threats of domestic violence.

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[22] Howard Research 2000; Prairie Research Associates 1996 and 1999, *supra* note 21.

[23] Prairie Research Associates, 1999, *supra* note 21.

In most jurisdictions, police enter civil domestic violence protection or restraining orders into the Canadian Police Information Centre (CPIC) database under the "special interest police" category of the "persons" file or in the "probation" category of the "persons" file. British Columbia has established a Protection Order Registry, which receives all orders and conditions related to the safety and security of a person, including peace bonds, civil restraining orders and judicial interim release (bail) orders. This is a stand-alone registry but CPIC users have access to it through a CPIC interface.

The enforcement of breaches of civil orders,[24] both within and across jurisdictions, has been raised as a significant concern for jurisdictions. The FPT Co-ordinating Committee of Senior Officials—Family Justice is reviewing this issue. A number of jurisdictions have passed the *Uniform Enforcement of Canadian Judgments Act*, which provides for the reciprocal enforcement of civil protection orders. Others have not yet done so.

v) Challenges

Jurisdictions that have not yet enacted civil domestic violence legislation must consider whether it is a priority among the range of tools available to respond to domestic violence, given that most remedies are already available and that utilization rates may be low. However, evaluations indicate victims and stakeholders support this legislation, expressing the view that the additional remedies greatly benefit some victims, and may provide more opportunity for early intervention.

In some jurisdictions there is evidence that civil legislation is being used instead of criminal charges, even when reasonable grounds exist for laying a charge. To ensure civil legislation is not used to supplant the *Criminal Code*, jurisdictions must monitor and evaluate its impact.

Concerns have been expressed about the unenforceability of orders issued under provincial domestic violence legislation, particularly in (but not limited to) northern and isolated communities. Accordingly, there is a fear that the orders give victims a false sense of security, Further, access to victim services in northern and remote communities is a challenge and a potential barrier to the introduction of legislation.

Apart from the issues and concerns identified above, a key challenge for jurisdictions is the acquisition of sufficient resources to implement the legislation (resources for training, consultation and stakeholder relationships, public education, co-ordination and problem resolution, monitoring and evaluation).

vi) Recommendations

The prime value of civil domestic violence legislation is the immediacy of protection and practical intervention it offers by way of remedies to victims and their children. Although many of the remedies are contained in other provincial legislation, provincial domestic violence laws bring many of the most significant remedies together in one statute.

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[24] In September 2001, in a report to Ministers, the Ad Hoc Working Group recommended that s.127 of the *Criminal Code* (Disobeying Order of the Court) be hybridized and that a maximum penalty of six months be imposed on summary conviction and two years on indictment.

Domestic Violence Legislation

It is recommended that jurisdictions consider whether the adoption of civil domestic violence legislation would provide more immediate and broader remedies than currently exist, for example, under the *Criminal Code*. Of particular importance are provisions granting the victim exclusive occupation of the home, temporary possession of personal property, and temporary care and custody of the children, and a specific prohibition against selling, converting or damaging property. Provisions directing removal of the abuser and seizure of weapons are also important. In jurisdictions where it has been enacted, civil domestic violence legislation is not to be used as a replacement for criminal charges where reasonable grounds exist for such a charge. However, criminal and civil process may be used concurrently.

The following critical success factors should guide the implementation of the legislation:

- training should be conducted well in advance of the proclamation of this legislation and should include information about its relationship to the *Criminal Code*;
- attention should be paid to the importance of garnering community and stakeholder support;
- mechanisms and co-ordinating committees should be implemented to ensure that problems, such as training or interpretation issues, are identified and addressed early;
- the legislation should be closely monitored and evaluated, a task that should include developing methods for tracking breaches of the legislation;
- public education should accompany the legislation to ensure victims and the community are aware of it;
- issues pertaining to the application of the legislation on reserve or settlement land should be addressed in consultation with Aboriginal communities to enlist their support to ensure the protection of victims and their children and to ensure the same degree of protection is available to individuals on and off-reserve; and
- provision of adequate legal aid resources will be required to assist women with the longer term victim assistance orders in order to make them effective remedies.

SECTION III: SUPPORT PROGRAMS[1]

1) VICTIM SERVICES

One of the most important objectives of the pro-charge policies is the protection of victims through provision of a denunciatory response to spousal/partner violence with the ultimate goal of deterring subsequent abusive behaviour. The directive to proceed with charges and prosecution, notwithstanding the victim's wishes, was seen as beneficial to victims by taking responsibility for such action out of their hands.

However, the objectives of domestic violence victims frequently conflict with those of the justice system. Many victims have goals other than legal sanctions—such as staying in their home, preserving their relationship, obtaining counselling for their partners, and protecting themselves and their children. Even with a prosecutorial policy to proceed with charges wherever possible, unwilling victims find ways to circumvent the criminal justice process: by failing to attend court, by showing strong reluctance to testify and by changing their evidence on the witness stand.[2]

Governments have responded by providing services to support victims of spousal or partner violence who are involved with the criminal justice system. Victim services, in this context, are defined to mean services provided as a result of the victim's involvement with the criminal justice system, as distinct from other services, such as shelters, that may be provided to victims. While the objective of all such programs is to provide for the victim's safety and well-being, some victims services have the implicit (and sometimes the explicit) objective of ensuring that the victims co-operate with justice system processing—so that they do not change their testimony or otherwise withdraw their co-operation from the criminal proceedings.[3]

In jurisdictions committed to retaining or implementing aggressive policies of charging and prosecution in domestic violence cases, the availability of information and services to victims of crime can be expected to increase victim satisfaction with the process. The success of the London, Ontario, mandatory charging policy has been attributed, in large measure, to the availability and effectiveness of specialized services in the community.[4]

i) Cross-jurisdictional Overview of Victim Services

While all jurisdictions offer victim services, the scope of the services and the delivery agents differ significantly. Some are police-based, some are system-based (including correctional), and others are community-based. Programs may be delivered by government, police or community organizations and by paid staff or volunteers. Services include crisis intervention, advocacy and support, court accompaniment, information about case status, assistance with victim impact statements, referral to other services and criminal injuries compensation. The nature of services provided varies at the local level, reflecting the needs and capacity of individual communities. Volunteers and community agencies first offered many of these services and they continue to play a vital role.

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[1] Portions of this section have been excerpted from Nova Scotia Department of Justice, *A Review of the Effectiveness and Viability of Domestic Violence Interventions as an Adjunct to the Formal Criminal Justice System* by Judy Crump (2001).

[2] Department of Justice Canada, *Alternatives to Prosecution in Domestic Violence Cases: An Overview of the Research Literature* by Sharon Moyer (2000) at 10.

[3] *Ibid.* at 1.

[4] Jaffe, *et al.*, 1991 in Brown, 2000.

Primary differences among these services are that some offer no criminal injuries compensation program to victims, and some offer limited or no counselling, support or court accompaniment. Comprehensiveness of service, staff caseload and geographic coverage appear to be common issues.

In British Columbia, the province plans to fund 91 police-based victim service agencies serving 113 police jurisdictions by the end of 2002-03. There will also be 62 community-based programs, including programs for male survivors and Aboriginal victims.

Ontario is fast expanding and integrating its support to victims through its newly created Victim Services Division within the Ministry of the Attorney General, which brings together all victim services from three justice ministries. Currently, the Victim Services Division is responsible for the Victim Witness Assistance Program, now in 42 sites and expanding to all 54 court jurisdictions, in addition to police and community-based victims services. As well, funding has been provided for approximately 119 transitional support workers throughout the province who provide support to abused women (not tied to the justice system); for approximately 100 counselling programs for abused women; for approximately 131 support groups within the Early Intervention Program for Child Witnesses of Domestic Violence; and for a province-wide Assaulted Women's Helpline and enhanced crisis line services for the francophone community.

Quebec has Centres of Victims Services in 11 sites around the province, providing support to victims as they interact with the justice system. Crown counsel are members of intersectoral committees around the province. Correctional officials also participate in the intersectoral committees. For the past few years, the Correctional Services of Quebec (CSQ) have been providing services to victims of spousal violence, including certain information regarding the offenders. In addition, the CSQ intends to implement the *Act Respecting the Québec Correctional System* which contains provisions related specifically to spousal violence. With these provisions, the granting of information to victims will be legally sanctioned and further adapted to victims' needs. Moreover, the CSQ uses an identifier for spousal violence files, primarily so victims receive appropriate information in a timely manner. Finally, victims of spousal violence will have the opportunity to make presentations regarding certain forms of release of incarcerated offenders.

In Manitoba, extensive services are provided through the Women's Advocacy Program, community-based services funded by government, and RCMP-based victim service units—most funded by the province, some operated by volunteers and all supported in-kind by the RCMP.

In New Brunswick, victims services are provided by RCMP volunteer victim assistance co-ordinators, by four municipal police-based programs, by community agencies with direct police liaison, and by the province's victims services program, which is offered throughout the province. Newfoundland and Labrador offers a system-based program with staff in 10 regional offices and 1 provincial office. Nova Scotia also operates a provincial program through the Department of Justice, augmented by services provided by RCMP community assistance volunteers and programs provided by municipal police services in some locations. In Prince Edward Island, Victim Services at the Office of the Attorney General operates throughout the province and provides assistance at all stages of the criminal justice process.

In Saskatchewan, there are 17 police-based co-ordinators (RCMP and municipal police), eight Aboriginal resource officers in five centres, and three centres with victim/witness co-ordinators. More than 350 victim services personnel and volunteers work out of approximately 50 RCMP detachments. In Alberta, victim services are provided through 107 police-based victim service units, as well as through community-based programs that offer specialized services and through Public Assistance Units based in Crown offices. In Yukon, services are provided in six sites through the Family Violence Prevention Unit as well as by RCMP victim assistance workers. Victim witness assistance staff also operate out of the federal Crown office. In the Northwest Territories, victim/witness assistance staff operate out of the federal Crown offices in Yellowknife and Inuvik; the Government of the Northwest Territories also provides funding to community organizations in four communities to provide victim support, information and follow-up. In Nunavut, victim assistance staff operate out of the Crown office.

A number of jurisdictions provide emergency telephone lines for women in crisis and a variety of non-justice-based services. In Quebec, for example, community victim support groups operate a 24-hour phone line to support and comfort victims.

A cross-jurisdictional overview of victim services is provided in section VI of this Report.

ii) Elements of an Effective Response

Provision of victim support is a critical ingredient in an effective response to family violence. A number of studies have been conducted on victims' needs and their satisfaction with the criminal justice system (see above). Victims consistently say they require specific services and information related to the criminal justice system, such as non-evidentiary pre-trial preparation; details on the status of their particular case; notification of the accused's status at various intervals throughout the case, from charge and arrest to sentence completion; co-ordinated access to services; and support as they participate in the justice system.

Key components of an effective victim service are as follows:

- intervention as soon as possible following the incident;
- access and referral to a continuum of services;
- services that recognize the unique needs of spousal/partner abuse victims;
- collaboration and co-ordination among agencies providing services;
- clarity of roles (between criminal justice-based victim services and community support agencies); and

- availability of information and effective communication mechanisms among players within, and external to, the justice system.

iii) Challenges

Domestic violence differs significantly from extra-familial violence in terms of the intimate (and frequently ongoing) relationship between victim and assailant. The criminal justice system has a special role to play with victims of these offences in providing support to enable them to participate in the process. The challenge is often to reconcile the competing, and sometimes conflicting, goals of the victim and the criminal justice system.

With limited resources, jurisdictions need also to decide where support to victims can be provided most strategically. The justice system must recognize that community agencies have long played a vital role in providing assistance to victims and their role should be supported. Mechanisms to ensure collaboration between the community and the justice system are required to meet victims' needs.

iv) Recommendations

It is recommended that jurisdictions, in collaboration with community agencies, continue to ensure the provision of support services to victims to assist them throughout their involvement with the criminal justice system. These services should include, at a minimum:

- information about abuse, the criminal justice system, the role of the victim-witness, and case status;

- referral and access to a range of supporting agencies and services to meet the multiplicity of victim needs;

- victim notification of and participation in decisions regarding the release of accused individuals and offenders, and conditions associated with the release;

- emotional support crisis intervention;

- assistance with victim impact statements; and

- risk assessment and safety planning.

2) SHELTERS, OUTREACH, ADVOCACY AND OTHER SUPPORT SERVICES FOR ABUSED WOMEN

i) Types of Support Services

Shelters and transition houses

For many years, the only services dedicated solely to responding to the abuse of women were shelters. Places of safety for women (and frequently children) are provided in all provinces and territories, although the range of services—including timing of the intervention[5] and levels of funding provided—differ. Facilities include transition houses and shelters, second-stage housing, safe houses and family resource centres. All are residential-based programs or have a residential component (meaning that they can accommodate abused women and their children overnight or for varying periods of time). Most provide counselling and other support programs (such as safe and secure emergency housing, crisis intervention, emotional support, information and referral, food, shelter, advocacy, a crisis telephone line and children's programs) within the shelter. Some also offer outreach services to former residents and non-residents through telephone, by letter, through walk-in contact or through support groups.

According to the Transition Home Survey 1999-2000,[6] 62 percent of the facilities provided services for women with disabilities and 63 percent provided culturally sensitive services for Aboriginal women, while nearly 6 in 10 shelters provided culturally sensitive services to ethno-cultural and visible minority residents.[7] Services are generally offered by paid staff and volunteers. See section VI of this Report for an overview of shelter services provided.

In 1999-2000, 96,359 women and dependent children were admitted to 448 shelters for abused women across Canada.[8] The GSS of 1999 determined that 11 percent of women who experienced spousal violence in the last five years stayed in a shelter.[9] While women under the age of 25 experience the highest rates of spousal violence,[10] these women represented a small proportion of abused women residing in shelters (20 percent).[11] As to why proportionately few abused women seek refuge in shelters, it has been speculated that many women turn to friends or relatives or have the financial means to use other alternatives.[12] Still, on a given day (April 17, 2000), 254 women and 222 children were turned away from shelters across Canada, for the most part because the shelters were full.[13]

According to the 1993 *Violence Against Women Survey*, the severity of the violence helps determine whether women choose to enter a shelter. The survey revealed that 19 percent of women overall had at some point been injured severely enough to seek medical attention; for women who stayed in shelters, the figure was 63 percent.[14]

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[5] For example, second-stage housing helps women make the transition to independent living, often on exit from a shelter.

[6] This is a census survey of known residential (shelter) facilities in every province conducted every two years. Statistics Canada (Canadian Centre for Justice Statistics), *Juristat: Canada's Shelters for Abused Women, 1999-2000*, (Vol. 21, No. 1) at 2 and 11.

[7] *Ibid.* at 4.

[8] Statistics Canada (Canadian Centre for Justice Statistics), *supra*, note 6 at 6.

[9] Statistics Canada (Canadian Centre for Justice Statistics), *Family Violence in Canada: A Statistical Profile 2000* at 19.

[10] *Ibid.* at 15.

[11] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 6 at 8.

[12] Weisz, Taggert, Mockler and Streich, cited in Leslie M. Tutty, Gilliam Weaver, and Michael A. Rothery, "Residents' Views of the Efficacy of Shelter Services for Assaulted Women" in *Violence Against Women* Vol. 5, No. 8 (1999) at 425-441.

[13] Statistics Canada (Canadian Centre for Justice Statistics), *supra*, note 6 at 10.

[14] Statistics Canada (Canadian Centre for Justice Statistics), *Family Violence in Canada: A Statistical Profile 1999* at 42.

The research points to the important role of shelters in providing outreach programs in addition to residential services. Still, the majority of women never seek shelter services. More varied accessible services are advocated, such as direct recruitment in civil and criminal courts; enhanced phone contact; brief sessions providing condensed information; and an intermediate form of counselling between phone counselling and shelter-based counselling, such as a drop-in centre.[15]

Shelters developed from the growth of the women's movement in the 1970s. Despite their prevalence across North America as the primary resource to protect assaulted women from violent partners, few shelters have been evaluated. Consequently, little is known about the impact of shelter stays on users of these facilities. There is even considerable debate regarding the measures of success that should be used. Much of the research is based on the assumption that the optimal goal of shelter programs, and one with which women were presumed to concur, was for independent living apart from the abusive partner.[16] Shelters' success, as measured against that outcome, is seen as limited. The need to reassess independent living as the major criterion for success has generally been acknowledged. Statistics regarding the number of women who return to their partners after staying in a shelter vary from between 49 percent and 58 percent (1981 to 1989)[17] to 17 percent (April 17, 2000).[18]

Although some recent legislative reforms have as a primary objective the restraint of the perpetrator, to prevent disruption in the lives of abused spouses and children as much as possible, short-term safe housing and outreach services for women in crisis situations will undoubtedly continue to form an essential component of the continuum of services for victims of spousal and partner violence.

Other non-residential support programs for abused women and their families

London, Ontario, was one of the earliest communities to offer support, advocacy, legal and other information, and referral to services for abused women on a non-residential basis, recognizing that services need to be provided in multiple ways.

Women's centres and family resource centres also provide abused women with support, information and referral. Some shelters have begun to provide a range of services under the rubric of one board or through involvement on the boards of other service providers.

See section VI of this Report for a cross-jurisdictional survey of these programs.

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[15] Edward W. Gondolf, "Service Contact and Delivery of a Shelter Outreach Project" in *Journal of Family Violence* Vol. 13, No. 2 (1998) at 131-145.

[16] However, the goal of shelters, as typically reflected in policy and program standards, is to provide a place of safety and an opportunity for women to learn of services and alternatives for themselves and their children.

[17] Leslie M. Tutty, "Post-Shelter Services: The Efficacy of Follow-up Programs for Abused Women" (1996) *Research on Social Work Practice* 6.4 (1996) at 425-441.

[18] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 6 at 10.

ii) Elements of an Effective Response

Due to the multiple needs of victims and their families, a range of services must be available to complement government support services for victims involved with the criminal justice system. Services required include the following:

- emergency access to a safe place (including emergency transportation and overnight accommodation, particularly for those in rural and isolated areas);
- counselling and emotional support (immediately following a crisis and through follow-up and outreach on a residential or non-residential basis);
- information and referral;
- access to affordable and safe housing, and to legal and medical services;
- employment and income support;
- mental health and addiction services where required;
- child care, child support and counselling for children to overcome trauma;
- safety planning; and
- assistance with the family law system (spousal maintenance, custody and access, child support and accommodation).

Decisions regarding these issues must be made quickly, at least in the interim, and must recognize as paramount the need to ensure the safety of victims and their children.

An effective response to victims can be provided in two ways:

- through professionals trained in a variety of disciplines (who can identify abuse and respond appropriately); and
- through an array of support services specific to family violence.

Support can be provided via non-residential service, such as family resource centres, battered women's advocacy clinics, women's centres, shelter outreach programs and many other vehicles, which already operate throughout the country.

Training for professionals and service providers in a variety of disciplines is necessary to implement an effective response. These professionals include health service professionals (physicians, emergency room staff, public health nurses, paramedics, nurses and home care staff), members of the legal community, mediators, court assessors, conciliators, lawyers, mental health professionals, social workers, income assistance staff, child protection workers, educators and school personnel, in addition to criminal justice system personnel. A comprehensive, co-ordinated continuum of services must be available to provide an effective response.

iii) Challenges

The key challenge for jurisdictions is to determine how the varied needs of these families can be met in a supportive, consistent, co-ordinated, timely and effective fashion. Additional services and ways of reaching the majority of abused women who do not currently use shelters and outreach services need to be explored. It is essential that continued efforts be made to remove barriers preventing women from using needed services. It is also critical to meet the needs of women from diverse communities and from isolated or rural communities.

Abused women may access service from a variety of entry points in addition to police and shelters, such as emergency rooms, family physicians, income security programs and family courts. These services need to be equipped to respond sensitively and effectively, providing information and referral to specialized counselling and services that meet these women's needs.

People providing shelter services to abused women may not see their objectives as congruent with those of the justice system. In view of the negative reaction of some victims to their experience with the justice system, advocates working within shelters may not encourage women to participate in the justice process as witnesses. In some jurisdictions, shelter directors complain that they have not been consulted by the criminal justice system. This tension between these agencies and the criminal justice system is perhaps a manifestation and natural extension of the tension that exists between victims and the justice system, borne partly out of historical response and partly out of the sometimes conflicting objectives of victims and the justice system. Efforts must be made to co-ordinate responses and to work together to build partnerships at interagency levels in order to share perspectives and ownership of the problem. Identifying ways in which communities and systems can strengthen their response to provide an effective, co-ordinated and comprehensive array of services to victims and their families is essential.

iv) Recommendations

It is recommended that jurisdictions explore ways to ensure the provision of a continuum of accessible, comprehensive and co-ordinated community-based and government services to victims and their families, including both shelter and outreach services. Training for criminal justice professionals and service providers in a variety of disciplines serving abused women and their children is necessary to strengthen working relationships, to understand differing objectives and to implement an effective response.

3) INTERVENTIONS FOR CHILDREN EXPOSED TO DOMESTIC VIOLENCE

The 1999 GSS revealed that approximately half a million children in Canada had heard or witnessed a parent being assaulted during the previous five years.[19] Data provided in section I of this Report indicate that many children repeatedly witness abuse of a parent, usually their mother, and that many are negatively affected by this exposure to violence. Research indicates that police, criminal justice and family law systems are involved in or aware of the exposure of children to violence in the home. Also, evidence suggests that children are harmed not only by their exposure to family violence but as direct recipients of threats and abuse themselves. It has been estimated that the extent of overlap between woman abuse and child physical or sexual abuse is approximately 30 to 60 percent.[20]

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[19] Statistics Canada (Canadian Centre for Justice Statistics), *supra* note 9 at 16.

In the research literature from the past two decades, evidence of the negative impact of domestic violence on behavioural development is unequivocal.[21] In recent years, increasing attention has been focused on the impact of high-conflict divorce on children who have been exposed to adult domestic violence.[22]

While it is clear that this is an under-researched area, the types of interventions that have been tried with children include individual and group counselling, centres that provide facilitated (access exchange) or supervised access, and programs for children of parents who are divorcing or separating, as well as programs for these parents themselves.

The Department of Justice Canada commissioned an extensive meta-analysis in 1998 of the various intervention models then in existence. A summary report identified key justice-related policy considerations including the following:

- the promotion of a co-ordinated approach to the plight of children who are exposed to violence in the home, involving legal, mental health, medical and social service resources;
- a recognition that mandatory reporting to child protection agencies in cases of spousal/intimate partner violence where children are present might deter women from seeking assistance (it is suggested that interventions for children might best be provided by private, non-profit services, with public assistance); and
- the requirement for basic incidence and prevalence information about children who are exposed to violence in the home, as well as information about the interrelationship between exposure to violence and other forms of child abuse and neglect.[23]

i) Cross-jurisdictional Overview of Programs for Children Exposed to Family Violence

Although significantly under-funded to date, these programs are receiving increasing recognition as a key prevention and recidivism reduction measure. Some jurisdictions have begun to invest heavily in this area, providing counselling, either individually or in group format or both, to children to help them overcome the trauma of exposure to violence in the home and to stop the intergenerational transfer of abusive behaviour. Complementary support programs are also provided for mothers who have been abused to teach parenting skills and techniques of coping with their children's behaviour.

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[20] Jeffrey L. Edleson, "Studying the Co-occurrence of Child Maltreatment and Domestic Violence in Families" in Sandra A. Graham-Bermann and Jeffrey L Edleson, eds, *Domestic Violence in the Lives of Children: The Future of Research, Intervention, and Social Policy*, (Washington, D.C.: American Psychological Association, 2001) 91-110 at 91.

[21] Jerome B. Kolbo, Eleanor H. Blakely, and David Engleman, "Children Who Witness Domestic Violence: A Review of Empirical Literature" (1996) *Journal of Interpersonal Violence* 11.2 at 281-293.

[22] Peter G. Jaffe, Samantha E. Poisson, and Alison Cunningham, "Domestic Violence and High-Conflict Divorce: Developing a New Generation of Research For Children"in Sandra A. Graham-Bermann and Jeffrey L. Edleson, eds., *supra* note 20 at 189.

[23] Department of Justice Canada, *Intervention Models for Children Who Witness Violence: A Needs Assessment*, by Educon Marketing and Research Systems (July, 1998) (http://canada.justice.gc.ca/en/ps/rs/rep/TR98-6E.htm) at 5-6.

Saskatchewan offers four programs for mothers and children exposed to family violence. Manitoba offers short- and long-term counselling for children who witness violence at home. Calgary has a number of services for children and youth who have either been exposed to domestic violence or who are themselves exhibiting aggressive behaviours at home or school. These community-based services are available to families using the services of the Domestic Violence Court. Ontario offers the Early Intervention Program for Child Witnesses of Domestic Violence. There are approximately 131 support groups within the program throughout the province. The program is based on the concurrent group model, where children, aged 4 to 16, are supported as they begin to recover from the effects of witnessing woman abuse while mothers are supported as they help their children recover from the effects of violence. British Columbia also offers individual and group counselling for children exposed to violence in the home.

Facilitated or third-party access is required for some families to protect abused mothers from exposure to re-assault. Supervised access is required where there is a concern about the parenting ability or capacity of an abuser or where there is risk of harm to the children. Parent education may also help these families to avoid placing their children in the middle of disputes following separation or divorce. These relationships are often characterized as particularly high conflict with potential for violence and merit particular attention and priority for action.

Jurisdictions noted above have invested in programs to support children exposed to domestic violence but this remains an under-serviced area in many jurisdictions.

Child Welfare Involvement

Child welfare legislation in some jurisdictions contains specific clauses that recognize exposure to domestic violence as a potential reason for a child being deemed in need of protective services. Jurisdictions with such clauses include Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Manitoba, Saskatchewan and Alberta. The Northwest Territories has also introduced similar amendments to its legislation.

Protocols specific to the reporting of children exposed to domestic violence exist in Prince Edward Island, Nova Scotia, Ontario, Manitoba and Alberta. While protocols on child protection, transition houses and abusive partner interventions do exist, they may not be current and practice is inconsistent. There is evidence of a lack of reciprocal reporting between police and child protection agencies. More work must be done to ensure a consistent response, including joint training.

ii) Elements of an Effective Response

While additional research is needed, a number of programs for children exposed to family violence hold promise, such as group and individual counselling for children and youth to help them recover from trauma and learn new, non-violent conflict resolution skills. A complementary program helps non-violent parents understand the impact of the violence on their children, and provides coping methods and parenting techniques that support what the children are learning, as well as safety planning information. Such interventions provide a significant opportunity to reduce domestic violence by preventing the intergenerational transfer of violent behaviour.

Evidence suggests programs that provide facilitated (access exchange) or supervised access, programs for children of parents who are divorcing or separating, programs to help parents address separation and loss issues, and parenting skills programs for spousal abusers, are important in enhancing protection for victims and children.

While this area requires further research, the following are suggested as key elements of an effective response to children exposed to domestic violence:

- co-ordination based on the principle of offender accountability, provision of protection and support to victims to enable them to protect and support their children (where they are able), and provision of support services to children;
- improved links, including reporting and referral mechanisms and forms, between police and child protection agencies concerning children exposed to domestic violence;
- protocols for police, child welfare bodies, transition houses and abusive partner programs and training to ensure a consistent response among all parties, which empowers and protects abused women and their children and places accountability for the abusive behaviour on the perpetrator;
- an abusive partner intervention program (with an outreach component for the non-abusive partner), which should contain a component that deals with the impact of spousal/partner violence on children;
- links with domestic violence legislation (as another tool to protect and support victims and their children in their homes);
- access to programs for children and youth exposed to domestic violence to deal with the issues of recovery from trauma and to address children and youth exhibiting aggressive behaviour themselves; and
- an interdisciplinary advisory committee of multiple stakeholders to address policy issues (including respective roles, information-sharing and other elements of a collective response).

iii) Challenges

The challenge to jurisdictions is to determine the most effective means of promoting a co-ordinated approach to services for children exposed to violence in the home, involving legal, mental health, educational, medical and social service resources. Jurisdictions must also grapple with the following issues.

- Given that some provinces have specific clauses in their child welfare legislation that define children exposed to domestic violence as being "in need of protection," what are the implications of mandatory referral by police to child protection authorities?

- What are the best ways to protect children while encouraging women to seek assistance?
- How can children most effectively be protected when women choose to remain with a partner who has been violent?
- How can the desires of many women and the needs of children be reconciled without setting up a hierarchy of victims that pits women's needs against their children's needs?
- What is the role of the justice system?

There is a need to move toward building long-term supports for troubled families within the community. Family group decision making is a model that holds some promise.[24] Further research is required to determine the circumstances in which such an approach can be adopted, with appropriate safeguards for all participants.

The negative impact of spousal/partner violence on children is an issue with significant implications for family law reform. The issue is being considered by the Co-ordinating Committee of Senior Officials—Family Justice.

iv) Recommendations

It is recommended that jurisdictions develop, with community, justice and other government partners, a co-ordinated response to children exposed to domestic violence, based on the key elements of an effective response outlined above. Supported by services, a co-ordinated policy and procedure framework should be developed that holds the offender accountable, provides support to enable parents to protect their children, and does not re-victimize abused women and their children.

4) ABUSIVE PARTNER INTERVENTION PROGRAMS

Intervention programs for men who assault their partners[25] were initiated during the late 1970s, initially as educational groups promoting anti-sexist beliefs and subsequently incorporating cognitive and behavioural therapeutic techniques.[26] Group treatment became a popular sanction of the courts in the wake of pro-arrest legislation of the 1980s in the United States. Intervention programs for men may be required as part of a pre-trial diversion program, or imposed as part of a sentence or as a condition of probation.

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[24] Family group decision making was piloted in 1993 at three sites, Nain (Inuit), St. John's (urban) and Port au Port Peninsula (rural). In recognizing that child maltreatment and woman abuse often occur together, the project sought to build partnerships among family, community and government to keep children and adults safe. Most referrals, however, pertained to child abuse or neglect and youth unmanageability and did not specify the extent of woman abuse. The plan developed at the family group conference, involving relatives, friends and other close supports, required approval of the referring authority (e.g., child welfare or correctional services). See Joan Pennell and Gale Burford *Family Group Decision Making: After the Conference—Progress in Resolving Violence and Promoting Well-Being* (St. John's Newfoundland: Memorial University of Newfoundland, School of Social Work, 1997).

[25] To date, abusive partner intervention programs have focused on male perpetrators.

[26] Department of the Solicitor General of Canada, *An Overview of Corrections Research and Development Projects on Family Violence* by Karen Myers (1996); Robert C. Davis and Bruce G. Taylor, *Does Batterer Treatment Reduce Violence? A Synthesis of the Literature on Women and Domestic Violence: An Interdisciplinary Approach*, Lynette Feder, ed., (New York and London: The Haworth Press, 1999) at 69-93.

Groups for abusive partners often employ a mixture of theoretical approaches, although most are based on a feminist model developed by the Domestic Abuse Intervention Project in Duluth, Minnesota,[27] which asserts that male violence is part of a spectrum of efforts to control women. Program length may vary from as little as one day to 32 weeks, but most often, programs last approximately 16 weeks.[28] Some programs are open-ended and unstructured with new members joining established groups, while others do not permit continuous program entry.

Intervention programs have rarely been subjected to rigorous scientific investigation. Moreover, research on the impact of abusive partners' intervention programs on recidivism has produced conflicting results. There is little evidence that one form of intervention is more successful than others or that longer programs are more effective.[29] However, although empirical evidence is highly limited, there is some basis for hypothesizing that some batterers may fare better in treatment (or fare better in certain types of treatment) than others. There is evidence that violence toward intimates is harder to treat in abusers with longer and more serious histories of violence toward intimates, longer criminal records of violence toward strangers and traumatic violence exposure as children.[30] It is important to recognize that intervention programs may be more effective for some abusers than others (and, in fact, may be totally ineffective or harmful for some perpetrators).

A recent Canadian study[31] found that variations in program content resulted in little difference in recidivism rates. The study examined four programs in different regions of Canada that operated with different models (cognitive/behavioural, humanistic/existential, feminist/psycho-educational and eclectic). The programs selected for study were intended to represent those typically available in Canada, not to be considered exemplary. Program integrity, rather than content or philosophy, was considered to have an impact on recidivism rates, although the effect was only marginally significant. The authors conclude that the essential elements of effective intervention remain unknown.

Program attrition is a significant factor in considering the efficacy of abusive partner intervention programs. Typically, more than half of all participants assigned to treatment do not finish the program.[32] A research project funded by the Department of the Solicitor General of Canada[33] found that abusers with an unstable lifestyle (for example, unemployed people, people with low levels of education, or low income, or people who changed addresses frequently) and who did not believe the intervention program addressed their particular problems were most likely to fail to complete the program. The single strongest predictor of completion was self-identification of the need for treatment. The study questions the wisdom of the growing trend to make abusive partner intervention programs part of the conditions of probation for all abusers who assault their partners, without paying attention to an assessment of the likelihood that individuals will complete or benefit from a particular program.

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[27] Davis and Taylor, *ibid.*

[28] Department of Justice Canada, *An Evaluation Study of the Turning Point Project: A Treatment Program for Men Who Batter Their Partners* (Working Document by Thomas Gabor, 1993); Donald G. Dutton, *The Abusive Personality: Violence and Control in Intimate Relationships* (New York and London: The Guilford Press, 1998).

[29] Davis and Taylor, *supra* note 26.

[30] Fagan, *et al.*, 1984; Hamberger and Hastings, 1993.

[31] Department of the Solicitor General of Canada, *A Multi-site Study of Treatment for Abusive Men*, by Karl R. Hanson and Susanne Wallace-Capretta (2000).

[32] Davis and Taylor, *supra*, note 26.

[33] Department of the Solicitor General of Canada, *supra*, note 26.

In the United States, male batterers are frequently diverted.[34] Post-arrest, pre-trial diversion programs are available in a number of states, generally for defendants with no criminal record. Court-ordered counselling is initiated after criminal charges have been filed but before conviction. On successful completion of the treatment program, charges are dropped. The advantage of these diversion-to-treatment programs is that individuals can be referred and screened into the programs very quickly (often in less than a week). Moreover, the incentive to comply with program conditions is significant as charges are dropped if the abuser completes the program. The disadvantage is that abusive partners may choose to participate in order to avoid criminal sanctions.

i) Cross-Canada Overview of Abusive Partner Intervention Programs

Abusive partner intervention and treatment programs are offered in most Canadian jurisdictions.[35] All programs offer group counselling, sometimes supplemented by individual counselling and a specialized curriculum generally based on the dynamics of power and control. Many provide complementary counselling for, or frequent contact with, partners of the abusive spouse. Some programs are offered by justice ministries; others are provided by departments of health or social services, or by private agencies funded by government.

Alberta has a proposal for a treatment framework that will see expansion and funding based on compliance with standards.

In Quebec, the report of the coroner's inquest into the Gaumont-Lirette murder-suicide recommended the establishment of a hot-line for male batterers, which would be available 24 hours a day and which would provide support and advice to men in crisis situations who are at risk of perpetrating violence against their partner. This service has not yet been established. In the *Act Respecting the Québec Correctional System*, which the Correctional Services of Quebec will implement, spousal violence offenders will be able to begin to address issues related to their offending behaviour within the correctional context, before receiving therapy. In this respect, Correctional Services of Quebec will be able to enter into agreements designed to give offenders access to specialized therapeutic treatment.

Manitoba also funds a men's centre in Winnipeg as well as couple counselling[36] under very stringent and selective criteria. Conjoint interventions are controversial and few evaluations exist of their effectiveness. Central to the debate are concerns about safety and about minimizing risk to the female partner. Interventions are generally conducted under stringent guidelines, when the violence has stopped, the perpetrator has accepted responsibility for the violence, the partners wish to work on improving their relationship and there is a commitment to non-violence.

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[34] Department of Justice Canada, *supra*, note 2.

[35] An overview of intervention programs provided in provincial and territorial jurisdictions is contained in section VI of this report.

[36] See Diane Hiebert-Murphy and Barry Trute, "Treatment for Couples Who Have Experienced Violence: The Couples Project" (1998) Manitoba Social Worker, vol. 30, No 4, 1 at 8-10.

Ontario is expanding the number of Partner Assault Response programs as part of its Domestic Violence Justice Strategy and specialized court approach. Indeed, this expansion is an integral element in the model. Programs exist in approximately one third of the court jurisdictions in Ontario now. Once the justice strategy is complete, all 54 areas will have programs. Offenders pay a portion of the cost to promote accountability and responsibility, but this is done on an "ability to pay" basis.

In the post-plea referral program, selected offenders who plead guilty and successfully complete a treatment program are given a conditional sentence. This program is unlike those American diversion programs described above, in that prosecution is not deferred and charges are not dropped. Completion rates were higher in the Ontario early intervention programs than in the post-sentence court-ordered programs, although it is not known whether this difference is due to the characteristics of the offender or to the accountability associated with the final court date.[37]

In Yukon, the Assaultive Husbands Treatment program is offered to selected offenders who enter a guilty plea. Offenders are brought before the judge monthly so that progress can be monitored. Sentencing is deferred for up to a year. A women's program is offered by the same agency that provides the men's program. A man who wishes to have a no-contact order lifted must present a safety plan for his family to the court.

ii) Elements of an Effective Response

While more research is needed in the face of contradictory results to date, the key elements of an effective response appear to be as follows:

- the inclusion of partner outreach as a component, regardless of the perpetrator's participation in the abusive partner intervention program;
- the inclusion of a component that deals with the impact of the abusive partner's violence on his children;
- links between the abusive partner intervention program and services offered to the victims and their children, to enable victims to make informed choices about their safety;
- assessment of the perpetrator's potential to succeed in the program (the abuser should be screened for program suitability; and the relevance of the program to the abuser's characteristics should be considered);
- program admission as soon as possible following apprehension for a violent incident;

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[37] Department of Justice Canada, *supra* note 2.

- close ties to probation and to the court to ensure vigilant offender monitoring, immediate action on breaches and the provision of accurate information on offender participation in the program (this relates to offender accountability);

- accountability and monitoring mechanisms to address the impact of programs on offenders and the problem of high attrition (with meaningful sanctions for non-compliance); and

- a consistent and accepted definition of success.

iii) Challenges

A key issue is whether the justice system should promote the use of abusive partner intervention programs, in the absence of persuasive evidence of their effectiveness.

Questions remain about program admission criteria and the implications for denial of admission; the stage in the justice process at which perpetrators should be referred; the type of offender supervision that should be provided during participation in the treatment program, and who should be responsible; the mechanisms that should be established to ensure victim safety; and access to programs in rural and remote communities.

The definition of "success" is also in dispute. Is a reduction in the number or severity of violent incidents sufficient, or must there be absolute cessation? Over what time period must this reduction or cessation be sustained to be considered successful? Is replacement of physically abusive acts with psychologically abusive acts still an indicator of success? Recognizing that in some cases, the offender's motive is to avoid charges rather than to change behaviour, should we require simply program completion or evidence of behaviour change?

Encouraging assaultive partners to adopt non-violent responses to conflict is obviously a key element of a successful strategy to address domestic violence. Jurisdictions must continue to evaluate their current programs, building on the evidence of best practices to deliver programs to reduce recidivism, increase offender accountability and help victims who intend to keep living with the perpetrator.

iv) Recommendations

It is recommended that jurisdictions continue to develop programs for abusive partners and that these programs reflect evidence-based practice. They must support rigorous research and evaluation to help them determine the elements of an effective response.

5) RISK ASSESSMENT

i) Research and Best Practices

In addition to improving existing services, and exploring new initiatives and co-ordinated efforts to increase the safety of women assaulted by their intimate partners, women's activists, researchers, and public policymakers have tried to improve their understanding of their ability to assess risk related to both re-offending and lethality or dangerousness.

The science of predicting domestic violence is in its infancy. Data on the reliability, validity and predictive accuracy of risk assessment tools are so scarce[38] as to be "practically non-existent."[39] As few empirical studies have sought to distinguish risk markers, it is not possible to identify with certainty a particular set of characteristics that may be used to determine whether individuals are at risk of perpetrating or becoming victims of domestic violence.[40] Despite every effort based on knowledge to date, there is no way to guarantee safety for victims of spousal/intimate partner violence.

However, a number of factors have been identified as correlates of risk for perpetration of domestic violence[41] and for domestic violence victimization.[42]

While there are similarities or overlap between the risk factors for repeat violence and those for lethal violence, they are not identical.[43] Practitioners should be aware of this distinction when choosing assessment tools.[44] Jacquelyn Campbell has identified nine homicide risk factors that a majority of domestic violence experts have recognized: access to or ownership of guns, use of weapons in prior abusive incidents, threats with weapons, serious injury in prior abusive incidents, threats of suicide, threats to kill, drug or alcohol abuse, forced sex with the female partner and obsessive behaviour (such as extreme jealousy or dominance).[45] Campbell's *Danger Assessment Instrument* [46] has been widely tested and forms the basis for many of the informal assessment methods currently used.[47] A risk assessment and management tool and strategy developed by Randall Kropp and others at the British Columbia Institute Against Family Violence, the *Spousal Assault Risk Assessment Guide (SARA)*,[48] refers to both lethal and non-lethal violence. The *SARA* is a clinical checklist of risk factors identified in the research literature. It is intended to be an accessible tool for a full range of professionals, and contains what the authors consider a basic set of factors that should be considered when assessing risk.[49]

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[38] Jan Roehl and Kristin Guertin, "Intimate Partner Violence: The Current Use of Risk Assessments in Sentencing Offenders" (2000) 21 The Justice System Journal: 171-198 at 172.

[39] Neil Websdale, *Lethality Assessment Tools: A Critical Analysis* (Minnesota Center Against Violence and Abuse, University of Minnesota, 2001) (http://www.vaw.umn.edu/Vawnet/lethality.htm) at 1.

[40] David S Riggs., Marie B. Caulfield and Amy E. Street, "Risk for Domestic Violence: Factors Associated with Perpetration and Victimization" (2000) Journal of Clinical Psychology Vol. 56, No. 10:1289-1316 at 1290.

[41] Correlates of domestic violence perpetration are identified in the categories of prior relationship aggression, demographic and psychological characteristics, psychopathology, and relationship characteristics. See Riggs, *et al.*, *ibid.* at 1292-1297.

[42] The research on factors correlated with domestic violence victimization is much less clear. See Riggs, *et al.*, *supra* note 40 at 1298-1301.

[43] Jan Roehl and Kristin Guertin, *supra* note 38 at 174.

[44] Jacquelyn Campbell, "Issues in Risk Assessment in the Field of Intimate Partner Violence: What Practitioners Need to Know" presented at An International Conference on Children Exposed to Domestic Violence, Our Children Our Future: A Call to Action, London, Ontario (June 2001) at 12.

[45] Jacquelyn Campbell, 1995, cited in Jan Roehl and Kristin Guertin, *supra* note 38 at 174. In an analysis of 493 actual and attempted femicides in 11 US cities, Campbell has more recently identified further predictive and protective factors. See also Websdale, *supra* note 39 at 3.

[46] Jacquelyn Campbell, *Danger Assessment Instrument*, 1985, 1988, (http://www.nvaw.org.)

[47] Jan Roehl and Kristin Guertin, *supra* note 38 at 179.

[48] P. Randall Kropp, Stephen D. Hart, Christopher D. Webster, and Derek Eaves, *Manual for the Spousal Assault Risk Assessment Guide*, 2nd ed. (Vancouver, British Columbia: British Columbia Institute Against Family Violence).

Some of the cautions associated with the use of lethality assessment tools are summarized as follows:

- it is better to assert that factors are associative or correlative, as correlation is not proof of causation;
- lethal outcomes may depend on the availability of other services (for example, emergency medical services available to avert death in one location may not be present in another);
- it is impossible to measure the intensity of those cases that will escalate to death in a way that can be translated into a standardized assessment tool, as the meaning of variables (such as the intensity of entrapment) depends on the victims' subjective experiences;
- as domestic homicide may occur without a long history of abuse or service provider involvement, it is imperative not to provide women with a false sense of security when few of the typical antecedents are present, as there may be value in women understanding that any violent relationship may end in homicide;
- as use of the instruments presupposes a population of women who will complete questionnaires, assessment of risk is likely to exclude a large number of women from diverse populations who may be reluctant to disclose information to advocates, police, or other criminal justice personnel (moreover, since most of the instruments are only available in English, assessments will likely exclude many women from non-English-speaking communities); and
- the use of tools that employ check boxes may be impersonal, reducing women's experience to a final score at the very time when they most need individualized care and respect.[50]

Similarly, cautions are noted regarding the use of risk assessment tools adapted for use at different stages of the justice system, to evaluate the likelihood of repeated violence. For example, assessments are only relevant for a specific period of time, and decisions based on their results need to be re-evaluated later in the justice process. Further, service providers should remember that violence can occur even in the absence of identified risk markers.[51]

Despite these difficulties, and though empirical studies are few, there is early evidence to suggest that risk assessments used in safety planning for victims of intimate partner violence may provide additional insights, help victims adopt new safety measures, or help parties match safety planning to specific dangers. Use of assessment tools in relation to repeated or escalating violence may encourage co-ordination among multiple service providers,[52] expose justice officials to issues they might not otherwise consider and provide a "touchstone" for victims themselves, a lens through which they can see their situation.[53]

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[49] Randall Kropp, *et al.*, *ibid.* at 6-7.

[50] Websdale, *supra* note 39 at 6.

[51] Riggs, *et al.*, *supra* note 40 at 1292.

[52] Jan Roehl, and Kristin Guertin (1998) cited in Websdale, *supra* note 39.

Factors assessing the likelihood that violence will be repeated or escalate have been incorporated into a variety of risk assessment tools currently in use in North America among police, victim services, Crown Prosecutors and correctional services. Instruments are used at all points in the justice system, but they are most commonly used to guide decisions involving probation, treatment and incarceration. Although risk assessment is used in some locations to inform decisions regarding judicial interim release, the use of such tools is compromised by lack of time and opportunity. Efforts are made to identify high-risk abusers in order to assess and manage threats to victims and to allocate scarce probation supervision and treatment resources. As more offenders have been charged and received probation sentences, this group of offenders has come to comprise the single largest group on probation.

British Columbia is using the *SARA* checklist, which has been adapted for Crown use. Nova Scotia and Prince Edward Island have also initiated training on the use of this tool.

Forensic Assessment Services does risk assessment for the Calgary Domestic Violence Court. As well, Alberta uses a "risk factoring tool" when making decisions at bail. As part of Ontario's Domestic Violence Justice Strategy, police will be collecting data using a Domestic Violence Supplementary Report Form (DVSR), which includes a risk assessment component. A guide to completing the form includes information on the value of a sworn videotaped statement, and the process for obtaining one; a rationale for the risk assessment tool and the process for soliciting information; and information on a safety plan for the victim and children. Information collected is critical and will be used at various stages of the justice process by police, Crown Prosecutors, and Victim Witness Assistance Program staff.

A federally funded contract has been awarded to Randall Kropp to develop a revised risk assessment tool, based on earlier work on the SARA and to pilot it in three sites. The tool is intended to help criminal justice professionals assess the risk that the offender will re-offend after release (for example, on bail or post-sentence) and determine appropriate responses. It is anticipated the tool will include a checklist and interview guide for use with victims.

ii) Elements of an Effective Response

While further research is being conducted on the tools, it is too early to speak to their utility or effectiveness in decision making.

iii) Challenges

These tools hold promise for identifying those most apt to cause serious harm and thus provide an opportunity to intervene through, for example, arrest, detention in custody, sentencing conditions, release decision making and development of safety plans for the victim. However, it is important to apply these tools cautiously. Strong evidence does not yet exist that these tools clearly predict future behaviour. It is uncertain whether results are sufficient to distinguish among those abusers who pose a serious threat of lethal assault, those who are likely to cause harm but not lethal harm, and those not likely to cause harm.

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[53] Websdale, *supra* note 39 at 7.

Jurisdictions must be mindful of the limitations of these tools, particularly when offering guidelines for intervention based on the application of these tools. These cautions should be communicated in any training provided on the use of the tools. Their value may lie mainly in increasing awareness of the behaviour of abusive partners, possibly resulting in increased vigilance in monitoring these offenders and the more cautious release decisions.

iv) Recommendations

It is recommended that the use of validated risk assessment tools be recognized as important to assist decision making at various stages of the justice system. It is recommended that the use of risk assessment tools be further explored by jurisdictions, and that necessary caution be exercised when offering guidelines for intervention based on the results of their use. Any related training should communicate the limitations associated with risk assessment tools.

6) MONITORING AND ACCOUNTABILITY MECHANISMS

Auditing, monitoring and accountability mechanisms allow jurisdictions to assess the effectiveness of strategies and to ensure compliance.[54] To track the progress of cases through the justice system and to assess the impact of program and process changes on an ongoing basis, a jurisdiction needs an integrated information system. The capacity of jurisdictions to track cases from the point of a call to police through sentence completion is severely limited as, for the most part, justice information systems do not link components (police, the Crown and correctional services). Jurisdictions have relied on periodic special studies to assess justice performance.

Virtually all public inquiries, coroner's inquests and government investigations into incidents of spousal/partner homicide have decried the lack of comprehensive information regarding the justice system's response to incidents of family violence and have recommended the development of integrated information systems. The cost of and specialized expertise required for information systems development no doubt are major factors responsible for the relatively slow development in this area, as are ongoing operational expenditures to maintain such systems.

The Canadian Centre for Justice Statistics at Statistics Canada is currently assessing the feasibility of linking police, courts and corrections data in order to address questions related to sentencing patterns and recidivism among spousal violence perpetrators. Most court systems, except specialized domestic violence courts, do not identify the sex of the victims or the relationship between the victims and the accused. This information is critical for identifying spousal violence cases since there is no specific *Criminal Code* offence of "spousal violence." Police statistics do identify these characteristics of the victims and the accused, so linking police and courts data will provide much needed information concerning the processing and treatment of these cases at various stages of the criminal justice system. Results of the feasibility work are expected within two to three years.

Data are available on certain aspects of domestic violence legislation where it has been enacted; Saskatchewan, Prince Edward Island, Manitoba, Yukon and Alberta have each produced evaluation reports on their legislation. Nova Scotia undertook the most comprehensive tracking study to date and built a prototype information system to collect data on an ongoing basis, which was not implemented due to fiscal restraint. New Brunswick built a system based on aggregate data on family violence cases, which it continues to enhance. Manitoba tracked domestic violence cases in three police sites in the early 1990s and has produced evaluations of the Winnipeg Family Violence Court and related reports. Ontario recently published an evaluation of the operation of its domestic violence courts. Saskatchewan is planning to undertake a tracking study of its domestic violence cases handled in criminal court. Quebec produces annual reports from policing data. Yukon has produced a report on spousal assault and mandatory charging. RCMP data capture spousal assaults, but not the full range of spousal violence offences.[55]

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[54] See section VI of this report for a summary of data collection and monitoring systems.

Audit mechanisms are key to determining justice professionals' level of compliance with pro-charge, pro-prosecution policies. Although tracking studies conducted in recent years have demonstrated an increase in police charge rates, there is still evidence that police in some areas advise victims to apply for a peace bond, despite the existence of evidence to support a charge. By assessing staff performance according to the degree to which staff members comply with the policies, senior managers of criminal justice agencies convey the importance of the policies.

i) Elements of an Effective Response

Data collection should be ongoing and supplemented by periodic research studies into specific areas of inquiry. Ad hoc, one-time studies do not provide sufficient information for good policy development and program management. Jurisdictions must collect data over time so they can analyze trends, detect deviations from expected performance, and make the necessary changes in policies, practices, procedures or other areas. Performance measurement is an ongoing function of good governance. Data should inform public policy and practice.

Within each component of the justice system, managers must ensure compliance with policies and procedures by making compliance assessment an integral part of performance management.

Elements of an effective response include the following:

- the use in all data collection systems of a family violence identifier to distinguish cases of spousal/partner abuse;
- identification and collection of justice system key performance indicators (such as charge and arrest rates, "drop" rates, conviction rates, dispositions, duration of offender treatment and supervision, offender compliance with conditions, charges for non-compliance, rates of re-offending) to enable comparisons both within and between jurisdictions;
- the capacity to produce management reports on justice system performance (by-products of operational systems) for executive decision-making purposes;
- information system integration (from police and courts to correctional services) so that individual cases can be tracked;

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[55] Nova Scotia Department of Justice, *Nova Scotia Family Violence Framework for Action Review: Interjurisdictional Comparison and Literature Review* by Carolyn Marshall (2001).

- use of research to inform policies and practices; and
- performance management to ensure that front-line workers comply with policies and procedures.

ii) Challenges

Accountability mechanisms, and particularly monitoring and tracking systems, are compromised by the lack of an integrated justice information network, resource constraints and the limitations of current technology.

Monitoring, tracking and obtaining statistics on spousal abuse are difficult because the relationship between victim and offender, rather than a specific offence, is the factor that distinguishes them from other cases.

iii) Recommendations

It is recommended that jurisdictions develop or enhance accountability mechanisms for monitoring justice system performance in family violence cases, to support sound executive decision making and measure the impact of new initiatives. It is recommended that jurisdictions support the development of information systems, based on the collection of common key performance indicators, to enable evaluation of justice system performance. The development of common methodologies for examining programs is also recommended (for example, when evaluating abusive partner intervention programs) to facilitate knowledge exchange and advancement.

7) TRAINING

All Canadian jurisdictions have mounted training initiatives with the objective of improving the response of the justice system to incidents of domestic violence.[56] Specific training programs have accompanied the introduction of new provincial and territorial policies or protocols; new domestic violence legislation; or new structures, such as specialized domestic violence courts.

Most jurisdictions have developed excellent training materials, which emphasize teamwork involving multi-disciplinary partners; the dynamics of domestic violence; elements of the legislation, policies and protocols; the roles of the various criminal justice agencies; and the primacy of victim safety.

In Saskatchewan, two evaluation reports on the implementation of domestic violence legislation in that province identified the need for more training. Saskatchewan has addressed the need for training sustainability by creating a position to develop and deliver training in family violence and the domestic violence legislation. By using a train-the-trainer approach, the province hopes to create a repository of expertise at the regional level.

In Prince Edward Island, training is ongoing with the support of existing resources such as the family violence co-ordinator. A new training package has been developed for police, in response to concerns identified in the evaluation of the provincial domestic violence legislation. However, the province indicates it is difficult to sustain the training initiative with existing resources.

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[56] See section VI of this report for a cross-jurisdictional summary.

Nova Scotia provided mandatory training for all 3000 justice system employees—police, court staff, Crown Prosecutors, corrections staff, and victim services staff—as part of the implementation of the government's Framework for Action Against Family Violence in 1996. This training was delivered using a train-the-trainer approach where selected police, Crown Prosecutors and other criminal justice professionals were trained to deliver the material to their peers. Community agencies were also involved in the delivery of training. A review of the Framework for Action, conducted by Dean Russell of the Dalhousie Law School, expressed concern that the training effort had not been sustained. As a result, the Justice Learning Centre was established by the Department of Justice, in partnership with Nova Scotia Community College, and subsequent training for all justice professionals is scheduled to begin in early 2003.

New Brunswick undertook a significant training effort with the introduction of its Woman Abuse Protocols in 1991. The Muriel McQueen Ferguson Centre for Family Violence Research at the University of New Brunswick, Fredericton, does offer a certificate program in family violence. In 2001, the government announced it would revise the protocols by 2003 and subsequently deliver new training. The Government of New Brunswick is committed to revising the existing protocols (women abuse and child abuse protocols), as well as announcing a refreshed training strategy in 2003.

In Quebec, pre-service training in domestic violence is provided to all police at the provincial police college. A training course is provided to Crown Prosecutors every 18 months. Quebec will accompany its new sexual assault policy with training. Correctional Services of Quebec offers specialized training in the dynamics of spousal violence for corrections officials. A program has also been established for corrections officials related to dealing with women who are victims of spousal violence. In addition, local communities also provide training opportunities.

In Ontario, new Crown Prosecutors and those who wish to be designated domestic violence specialists must take a one-week summer course on domestic violence. A new ministry-certified Ontario Provincial Police College domestic violence course for special investigators is now offered, and new probation staff to be hired as part of the Domestic Violence Justice Strategy will receive special training.

Manitoba has provided training regarding the implementation of its provincial domestic violence legislation and for Winnipeg police officers. Similarly, Alberta conducted a mass training effort to prepare for its *Protection Against Family Violence Act*. British Columbia conducted training to coincide with its Violence Against Women in Relationships Policy. The RCMP in that province provides training in relationship violence and the criminal harassment policy to every officer. A training program is available for Crown Prosecutors and support staff. A new program in risk assessment is being developed for police and victim service workers.

i) Elements of an Effective Response

A recent review of provincial and territorial domestic violence legislation and implementation strategies identified some important aspects of successful training initiatives:[57]

- training is an on-going function rather than a one-time occurrence (due to significant staff turnover and emerging issues); and

- training is as much about assessing and developing capacity as it is about providing information (recognition of the need to build and reinforce relationships between partners in a team approach to family violence).

Evaluation data indicates that training, as a component of an integrated strategy, has had a positive impact on criminal justice system performance.[58]

The following best practices have been identified:[59]

- integration of domestic violence into pre-service training and additional annual training sessions to update information;

- assignment of training co-ordination to a specific individual or group;

- content that addresses information about the dynamics of family violence; the legislative remedies and options available—both criminal and civil—and the interplay between them; and the unique roles of particular parties (case studies are a useful method to "test" the learner's ability to apply the policies and procedures as well as to create a common understanding of "real life situations" and the approaches to be used);

- specialized training for police and Crown Prosecutors on evidence collection and prosecution of domestic violence cases;

- specialized training regarding the dynamics of spousal violence for correctional service officials;

- a train-the-trainer approach, which facilitates training of large numbers in a cost-effective manner;

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[57] Department of Justice Canada, *Review of Provincial and Territorial Domestic Violence Legislation and Implementation Strategies* by Tim Roberts (2001).

[58] Nova Scotia Department of Justice, *Framework for Action Against Family Violence: A Review* by K.M. Waters (1999).

[59] Nova Scotia Department of Justice, *supra*, note 55.

- training that underscores the partnership between people with expertise in family violence and people with knowledge of the particular sector or profession to be trained, ensuring a sound foundation for development of training content and a delivery strategy;[60] and

- provision of training at the local level to build on resources available in the community, since successful training initiatives involve criminal justice professionals together with community representatives, in order to emphasize the community-justice partnership (training is not only a means to impart information but also a process of building community capacity and enhancing critical relationships among players—an approach that contributes to a common understanding of the problem and appropriate means of intervention as well as to a shared sense of responsibility).

ii) Challenges

Ongoing training of all justice workers is essential, because of the high turnover of staff and declining policy compliance in the absence of refresher training. Resource issues and the absence of a focal point of responsibility for ensuring training delivery affect the ability of jurisdictions to sustain training initiatives.

iii) Recommendations

It is recommended that each jurisdiction develop and implement a plan for the development and ongoing delivery of cross-sectoral training to new and existing staff dealing with family violence issues within the criminal justice system.

This training should be based on the critical success factors identified above, to ensure an effective response to family violence. It is suggested that jurisdictions share training resources to avoid duplication of effort and to minimize the burden of developing course material. The work of the National Judicial Institute should be supported to ensure that the judiciary continues to receive education regarding the dynamics of spousal/partner violence and the impact of the criminal justice response.

8) PREVENTION

While many of the aforementioned strategies may influence recidivism by deterring perpetrators and supporting victims once the abuse has occurred, the preferred strategy should be one of preventing abuse before it occurs. Prevention can be conceptualized as a continuum: preventing abuse from happening in the first place; intervening in a crisis to prevent continuance of abuse; and treatment or rehabilitation to prevent recurrence of abusive behaviour. Broad-based strategies that target the general public (such as public education and social marketing to change individual and collective tolerance for abusive behaviour) and strategies that focus on high-risk groups are components of a holistic prevention strategy.

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[60] This model, employed by the Nova Scotia Family Violence Prevention Initiative, which trained more than 6,000 professionals during its tenure, worked exceptionally well. Training materials were jointly developed, including program policy specifying roles and guidelines for an effective response for that profession or sector of workers. Delivery strategy involved use of both a family violence "expert" and a peer-to-peer model that enhanced credibility for learners. In this way, training was specific to the profession, clearly defined roles and performance expectations of staff, and took into account the particular challenges faced by that sector in responding.

i) Elements of an Effective Response

An effective preventive strategy must address all stages of the continuum of family violence and include the following:

- programs for children and youth exposed to family violence or exhibiting aggressive behaviour;
- school-based healthy relationship courses to teach the elements of healthy relationships and acceptable and unacceptable behaviour to both adolescent boys and girls as they begin to date, and to teach the concept of respect for others and conflict resolution techniques in earlier grades, as well as anti-violence campaigns and programs, including sexual assault and harassment prevention;
- public education to change attitudes, which contribute to the continued existence of family violence, in order to help victims identify abusive behaviour, to inform them of assistance available and to encourage individual and community action;
- early intervention measures, which seek to intervene early in relationships before abuse escalates to prevent further harm; and
- programs that enable abusive partners to address their abusive behaviour, preventing further harm to others.

ii) Challenges

Notwithstanding the deterrent and rehabilitative impact of criminal justice interventions, prevention of spousal or partner violence lies largely outside the scope of the criminal justice system. Prevention efforts are multi-dimensional in nature involving many players and systems and influencing behaviour at many levels over time. Resources must be committed elsewhere to have an impact on the justice system, and for the most part this impact is not immediate. Because systems are absorbed in responding to current crises, it is often difficult to redirect resources into prevention.

iii) Recommendations

It is recommended that resources at the government, corporate and community levels be committed to broad-based prevention activities, as identified in the key elements of an effective response identified above.

SECTION IV: SUMMARY

Spousal abuse is a complex problem, one that requires interventions from a number of sectors, including the criminal justice sector and the child welfare, education, social and health services sectors. The Ad Hoc Working Group therefore took a broad, multi-sectoral approach to its review of spousal violence policies and legislation. The Ad Hoc Working Group collaborated with other federal, provincial and territorial working groups, as well as with representatives from law enforcement, corrections, social services, statistics and other related fields. As a result, the process leading to the elaboration of this final report was both an enriching and informative experience for the Ad Hoc Working Group members and their colleagues and an excellent example of cross-jurisdictional and multi-sectoral collaboration. In fact, among the many lessons learned through this process, the need for comprehensive and co-ordinated strategies to address the problem of spousal abuse stands out as the key lesson learned.

An Effective Strategy to Respond to Domestic Violence

The elements of an effective response to domestic violence are common to each initiative undertaken and each focus of intervention:

- shared goals and objectives (that is, ensuring victim safety and holding offenders accountable) among all participants from a variety of disciplines;
- a sound procedural framework with clear protocols for intervention and information-sharing for each component, sector and discipline;
- commitment to co-ordination, collaboration and co-operation among all partners;
- training that emphasizes individual roles and responsibilities and links with other components;
- consistent policies that underscore commitment to goals at all levels of the organization;
- appropriate resources to provide services; and
- accountability mechanisms (for offenders, for justice system personnel, and for professionals of other systems and disciplines).

Within each jurisdiction, a comprehensive, co-ordinated strategy is needed to address the problem of domestic violence and the factors that contribute to it. Such co-ordination needs to occur across policy sectors (social, justice, education and health) and at all levels within each jurisdiction: at the provincial level (to establish a policy framework); at the local community level (to co-ordinate services and to identify needs, gaps and solutions); and at the individual level (to provide effective case management and conferencing mechanisms). The essential ingredients of an effective strategy addressing domestic violence within each jurisdiction include resources, a focal point of leadership and co-ordination, senior-level commitment and support to undertake these initiatives, and an accountability framework based on commitment to a long-range vision.

The Working Group acknowledges that many gaps remain in our understanding of the causes of spousal abuse; of the impact of the justice system response to this form of violence; and of the effectiveness of the various programs and services for victims and offenders. The Working Group recommends that jurisdictions support research to address these information gaps in order to provide a foundation for building a more effective response to spousal abuse.

SECTION V: LIST OF RECOMMENDATIONS

Charging Policy

1. The Working Group recommends the retention of the current pro-charging policies for spousal abuse cases. In this regard, the current test should continue to apply, namely, that a charge should be laid where there are reasonable grounds to believe that an offence has been committed and, in jurisdictions with Crown pre-charge approval, when it is in the public interest to lay a charge.[1]

2. These policies are often described as "pro-charging" policies; nonetheless, they are, in fact, the applicable standards for all criminal conduct. Their specific application to spousal abuse cases played a pivotal role in helping to make the critical distinction between the criminal justice system's treatment of spousal abuse as a "criminal matter" and its historical treatment of spousal abuse as a "private matter."

3. The Working Group also recommends that the elaboration of pro-charging policies for spousal abuse specifically address, at a minimum, the following key issues.

Test not met: Where there are no reasonable grounds to believe that an offence has been committed, but police nonetheless believe that the victim's safety may be at risk, police should consider the availability of other responses, including civil protection orders under provincial and territorial legislation on domestic violence, where applicable (see section II, subsection 3 of this report), and recognizance orders under section 810 of the *Criminal Code*. However, these alternative responses should not be used in place of charges where the test has been met.

Arrest: The pro-charging policy should not be viewed as modifying the standard criteria used to determine whether the circumstances of the case require the arrest of the offender. All of the circumstances should be evaluated before police decide to arrest, with or without a warrant.

Dual charges: Where the facts of a particular case initially suggest dual charges against both parties, police should apply a "primary aggressor" screening model, seek Crown review and approval of proposed dual charges for spousal violence, or do both.

Pre-charge diversion to alternative justice processes: The majority of the Working Group recommends against pre-charge diversion of spousal abuse cases to any alternative justice processes. The minority (British Columbia and Prince Edward Island) only allow pre-charge diversion of spousal abuse cases to Alternative Measures programs established pursuant to the *Criminal Code* on Crown approval and as set out more fully in section I, subsection 5.[2]

Investigation: Attending police must be directed to conduct a complete investigation and to collect all available evidence from all sources and not just from or primarily from the victim.

Risk assessment: When conducting any risk assessment, police should apply validated tools to assess the safety and security of the victim throughout the process, including for bail purposes.

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[1] In Quebec, the charging policy is identical to the prosecution policy and is therefore not distinguished as such.

[2] Quebec does not have any official Alternative Measures programs and therefore does not take a position on the use of these programs in spousal abuse cases.

Police should be supported in this regard through on-going training and education regarding risk assessment in spousal abuse cases.

Release of an accused from custody by the officer in charge: In assessing whether there are reasonable grounds to believe that the accused should not be released, the safety and security of the victim should be paramount. The officer in charge should consider whether there is a history of abuse including previous breaches of bail or probation conditions, and criminal or civil court orders. Where the decision is made to release the accused, the officer in charge should require the accused to enter into an undertaking that includes appropriate conditions such as non-communication, non-attendance (for example, at residence, schools and place of employment), firearms and drug and alcohol prohibitions. The victim should be advised of the decision to release an accused from custody and of any applicable conditions.

Victim support: Police should be required to advise of, and direct victims to, available victim services and other supporting agencies (such as shelters).

Prosecution Policy

4. The Working Group recommends the retention of the current pro-prosecution policies for spousal abuse. In this regard, the current test should continue to apply, namely, that spousal abuse cases should be prosecuted where, based on all of the evidence, there is a reasonable prospect of conviction and it is in the public interest to prosecute.[3]

5. These policies are often described as "pro-prosecution" policies; nonetheless, they are, in fact, the applicable standards for all criminal conduct. Their specific application to spousal abuse cases played a pivotal role in helping to make the critical distinction between the criminal justice system's treatment of spousal abuse as a "criminal matter" and its historical treatment of spousal abuse as a "private matter".

6. The Working Group also recommends that the elaboration of pro-prosecution policies for spousal abuse specifically address, at a minimum, the following key issues.

Judicial interim release: Crown counsel should require from police or, where bail hearings are conducted by the police, the investigating police officer should provide, sufficient information to assess the risk of harm to the victim's safety if the accused is released (for example, the results of the application of validated risk assessment tools or evidence outlining any history of violence, threats of serious violence, prior breaches of protective court orders, the use or presence of weapons, employment problems, substance abuse, and suicide threats). The concerns of the victim should be ascertained before the hearing. Where the determination is made to release the accused pending trial, Crown counsel should seek appropriate conditions of release including non-communication, firearms and drug and alcohol prohibitions. The victim should be notified of the outcome of the bail hearing, including conditions of release. In the event of a breach of bail conditions, Crown counsel should consider both prosecuting the breach and seeking an order cancelling the accused's release.

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[3] *Supra* note 1.

Witness information, notification and support: Spousal abuse victims should be provided with timely information about their case (for example, via police, victim witness assistant or Crown counsel). Victims should also receive continuing support (for example, by victim witness assistants) throughout the process.

Reluctant and recanting witnesses: Where a victim is unwilling or unable to testify or to support the prosecution, Crown counsel (via the police or victim service worker) should endeavour to determine the reason for the victim's reluctance (for example, she may be recanting because no spousal abuse actually occurred or she may be recanting because she has been threatened or pressured to do so by the accused). If the recantation is not credible, Crown counsel should consider whether there is other credible evidence on which to proceed in the absence of direct testimony by the victim. Where there is no longer a reasonable prospect of conviction based on the available evidence, the prosecution should be terminated.

Peace bonds: Where the pro-prosecution policy's test has been met, recognizance orders under section 810 of the *Criminal Code* should not be used in lieu of prosecution.[4]

Post-charge referral to alternative justice processes: The majority of the Working Group recommends against the use of post-charge alternative justice processes in spousal abuse cases, except in accordance with the criteria summarized in section I, subsection 5 of this Report. The minority (British Columbia and Prince Edward Island) only allow post-charge diversion of spousal abuse cases to Alternative Measures programs established pursuant to the *Criminal Code* on Crown approval and as set out more fully in section I, subsection 5.[5]

Sentencing: In making recommendations as to sentence, Crown counsel should do the following:

- consider section 718.2 of the *Criminal Code*, which makes the abuse of one's spouse or child an aggravating factor for sentencing purposes;
- ensure that the victim has had an opportunity to prepare and present a victim impact statement (section 722.2 of the *Criminal Code*); and
- seek appropriate conditions from the court as part of the sentence, such as conditions addressing non-communication and non-attendance, firearms prohibitions, and drug/alcohol prohibitions and, if appropriate, a condition directing assessment for counselling and/or treatment in an approved abusive partner intervention program.

Alternative Justice Processes

7. The majority of the Working Group recommends against the use of alternative justice processes in spousal abuse cases except in the following circumstances:

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[4] This recommendation reflects current pro-prosecution policies in most Canadian jurisdictions. A different approach involving the use of peace bonds after the commencement of a prosecution is currently being piloted in the Calgary HomeFront project. For more information, see subsection II (2) v).

[5] Quebec does not have any official Alternative Measures programs and therefore does not take an official position on the use of these programs in spousal violence cases.

i. the referral to the alternative justice process is made *post-charge on Crown approval*;

ii. trained and qualified personnel, using validated risk assessment tools, determine that the case is not high-risk (in other words, if after a consideration of a variety of factors including any history of violence, threats of serious violence, prior breaches of protective court orders, the use or presence of weapons, employment problems, substance abuse, and suicide threats, the offender is assessed to be at low risk of re-offending and therefore of low risk of harm to the victim's safety, as well as that of her children and other dependents, both throughout and after the process);

iii. the alternative justice process offers the same or a greater measure of protection of the victim's safety as does the traditional criminal justice process;

iv. the victim is fully informed of the proposed alternative justice process and her wishes are taken into consideration. In addition, victim consent is required and victim support must be provided where the victim will be asked to participate in the alternative justice process;

v. the offender fully accepts responsibility for his action;

vi. the alternative justice process is part of a program approved by the Attorney General[6] for the purpose of providing alternative justice responses to spousal abuse and is overseen by the Attorney General or the court;

vii. the alternative justice process is transparent (that is, it maintains formal and public records of the actions taken by those engaged in the process) and it is undertaken in a timely and reasonable manner;

viii. the alternative justice process has the capacity to deal with spousal abuse cases and is delivered and supervised by persons possessing the requisite skill, training and capacity, including the ability to recognize and address any power imbalances, as well as cultural differences; and

ix. the possibility of criminal conviction and sentence remains if the process fails.

The Working Group also recommends that approval of the use of alternative justice processes in spousal abuse cases needs to be supported by the following:

- the development and delivery of ongoing training and education for those involved in conducting risk assessment and in delivering and supervising the alternative justice processes and programs, including criminal justice personnel;
- the development and application of validated risk assessment tools for spousal abuse cases; and

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[6] To be further defined and accord with subsection 717(1)(a) of the *Criminal Code*: "...or the Attorney General's delegate or authorized by a person or person within a class of persons, designated by the lieutenant governor in council of a province."

- ongoing assessment and evaluation of alternative justice responses, including those used in spousal abuse cases, against new evidence-based research on the effectiveness of these processes, their ability to ensure the safety of the victim and her children, and their ability to reduce the likelihood of re-offending.

Working Group Minority Positions:

- British Columbia and Prince Edward Island only allow the diversion of spousal abuse cases to Alternative Measures programs established pursuant to the *Criminal Code*, at either the pre- or post-charge stage, on Crown approval.

Quebec does not have any official Alternative Measures programs and, accordingly, takes no position on the use of these programs in spousal abuse cases.

Co-ordination and Inter-sectoral Collaboration

8. It is recommended that jurisdictions support and strengthen, with senior-level commitment, co-ordination of initiatives to respond to family violence within and outside departments of justice that include multiple government and community stakeholders. Models of co-ordination may differ among jurisdictions but should incorporate the key elements of an effective response identified below. An effective co-ordinated response requires leadership and a focal point of co-ordination of government family violence initiatives with:

- authority to shape policy development to achieve a co-ordinated and consistent policy framework among a variety of departments;
- representation by all affected departments at senior levels by people with the ability to influence departmental policy and who have access to the Deputy Minister;
- resources to implement a co-ordinated policy framework;
- an accountability framework with mechanisms to track and report on progress;
- some form of representation and involvement or partnership with community stakeholders with roles of parties clearly defined;
- processes to enhance relationship-building at all levels among all players, and to promote a sense of partnership and a shared vision based on a common understanding of the problem;
- encouragement of local inter-sectoral committees;
- support at a local level for government staff in the field, who implement provincial and territorial policy and who participate meaningfully in interagency forums to create positive working relationships and solutions to problems identified; and
- some joint case management function across agencies to develop co-ordinated case plans for individual families where abuse is a concern (that is, protocols governing exchange of information and service provision; and roles and ways of working together).

Domestic Violence Courts and Specialized Criminal Justice Processing

9. It is recommended that jurisdictions continue to explore options to improve the handling of spousal/partner abuse cases through a co-ordinated justice system response, including specialized court processes, based on the critical elements identified below. The adoption of specialized structures and processes should be guided by research and evaluation being undertaken in Canada and elsewhere.

Based on the experience to date, the critical components of successful models are as follows:

- methods to expedite cases;
- sensitive, informed and appropriate service provided by trained justice professionals;
- co-ordination of justice system response (in policy and practice);
- co-ordination with a range of other service providers;
- early access to treatment by offenders (to capitalize on offender motivation to change and allow for a more immediate response);
- monitoring of offender compliance with meaningful sanctions to hold offenders accountable;
- access to support, information and referral by victims; and
- monitoring and evaluation of systems to assess effectiveness and to identify areas requiring change and improvement.

Domestic Violence Legislation

10. It is recommended that jurisdictions consider whether the adoption of civil domestic violence legislation would provide more immediate and broader remedies than presently exist, for example, under the *Criminal Code*. Of particular importance are provisions granting to the victim exclusive occupation of the home, temporary possession of personal property, temporary care and custody of the children, and a specific prohibition against selling, converting or damaging property. Provisions directing removal of the abuser and seizure of weapons are also important. In jurisdictions where it has been enacted, civil domestic violence legislation is not to be used as a replacement for criminal charges where reasonable grounds exist for such a charge. However, criminal and civil process may be used concurrently.

The following critical success factors should guide the implementation of the legislation:

- training should be conducted well in advance of the proclamation of this legislation and should include the information about its relationship to the *Criminal Code*;
- attention should be paid to the importance of garnering community and stakeholder support;
- mechanisms and co-ordinating committees should be implemented to ensure that problems, such as training or interpretation issues are identified and addressed early;

- the legislation should be closely monitored and evaluated, a task that should include developing methods for tracking breaches of the legislation;

- public education should accompany the legislation to ensure that victims and the community are aware of it;

- issues pertaining to the application of the legislation on reserve or settlement land should be addressed in consultation with Aboriginal communities to enlist their support to ensure the protection of victims and their children and to ensure the same degree of protection is available to individuals on- and off-reserve; and

- provision of adequate legal aid resources will be required to assist women with the longer term victim assistance orders, to make them effective remedies.

Victim Services[7]

11. It is recommended that jurisdictions, in collaboration with community agencies, continue to ensure the provision of support services to victims to assist them throughout their involvement with the criminal justice system. These services should include, at minimum:

- information about abuse, the criminal justice system, the role of the victim-witness, and case status;

- referral and access to a range of supporting agencies and services to meet the multiplicity of victim needs;

- victim notification of, and participation in, decisions regarding the release of accused individuals and offenders, and notification of conditions associated with the release;

- emotional support and crisis intervention;

- assistance with victim impact statements; and

- risk assessment and safety planning.

Key components of an effective service are:

- intervention as soon as possible following the incident;

- access and referral to a continuum of services;

- services that recognize the unique needs of spousal/partner abuse victims;

- collaboration and co-ordination among agencies providing services;

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[7] Victim services in this context are defined as services provided as a result of the victim's involvement with the criminal justice system as distinct from other services, such as shelters, that may be provided to victims.

- clarity of roles (between criminal justice-based victim services and community support agencies); and

- availability of information and effective communication mechanisms among players within, and external to, the justice system.

Shelters, Outreach, Advocacy and Other Support Services for Victims

12. It is recommended that jurisdictions explore ways to ensure the provision of a continuum of accessible, comprehensive and co-ordinated community-based and government services to victims and their families, including both shelter and outreach services. Training for criminal justice professionals and service providers in a variety of disciplines serving abused women and their children is necessary to strengthen working relationships, to understand differing objectives and to implement an effective response.

Services required include the following:

- emergency access to a safe place (including emergency transportation and overnight accommodation, particularly for those in rural and isolated areas);

- counselling and emotional support (immediately following a crisis and through follow-up and outreach on a residential or non-residential basis);

- information and referral;

- access to affordable and safe housing, and to legal and medical services;

- employment and income support;

- mental health and addiction services where required;

- child care, child support and counselling for children to overcome trauma;

- safety planning; and

- assistance with the family law system (spousal maintenance, custody and access, child support and accommodation).

Interventions for Children Exposed to Domestic Violence

13. It is recommended that jurisdictions develop, with community, justice and other government partners, a co-ordinated response to children exposed to domestic violence, based on the key elements of an effective response outlined below. Supported by services, a co-ordinated policy and procedure framework should be developed that holds the offender accountable, provides support to enable parents to protect their children, and does not re-victimize abused women and their children.

While this area is in need of further research, the following are suggested as key elements of an effective response to children exposed to domestic violence:

- co-ordination based on the principles of offender accountability, provision of protection and support to victims to enable them to protect and support their children (where they are able) and provision of support services to children;

- improved links, including reporting and referral mechanisms and forms, between police and child protection agencies concerning children exposed to domestic violence;

- protocols for police, child welfare bodies, transition houses and abusive partner intervention programs and training to ensure a consistent response among all parties, which empowers and protects abused women and their children and places accountability for the abusive behaviour on the perpetrator;

- an abusive partner intervention program (with an outreach component for the non-abusive partner), which should contain a component that deals with the impact of the spousal/partner violence on children;

- links with domestic violence legislation (as another tool to protect and support victims and their children in their homes);

- access to programs for children and youth exposed to domestic violence to deal with the issues of recovery from trauma and to address those exhibiting aggressive behaviour themselves; and

- an interdisciplinary advisory committee of multiple stakeholders to address policy issues (including respective roles, information-sharing and other elements of a collective response).

Abusive Partner Intervention Programs

14. It is recommended that jurisdictions continue to develop programs for abusive partners that reflect evidence-based practice. They must support rigorous research and evaluation to help them determine the elements of an effective response.

While more research is needed in the face of contradictory results to date, the key elements of an effective response appear to be:

- the inclusion of partner outreach as a component, regardless of the perpetrator's participation in the abusive partner intervention program;

- the inclusion of a component that deals with the impact of the abusive partner's violence on his children;

- links between the abusive partner intervention program and services offered to the victims and their children, to enable victims to make informed choices about their safety;

- assessment of the perpetrator's potential to succeed in the program (the abuser should be screened for program suitability, and the relevance of the program to the abuser's characteristics should be considered);

- program admission as soon as possible following apprehension for a violent incident;
- close ties to probation and to the court to ensure vigilant offender monitoring, immediate action on breaches, and the provision of accurate information on offender participation in the program (this relates to offender accountability);
- accountability and monitoring mechanisms to address the impact of programs on offenders, and the problem of high attrition (with meaningful sanctions for non-compliance); and
- a consistent and accepted definition of success.

Risk Assessment

15. It is recommended that the use of validated risk assessment tools be recognized as a way to help people make decisions at various stages of the justice system. It is recommended that jurisdictions further explore the use of risk assessment tools, and exercise caution when offering guidelines for intervention based on the results of their use. Any related training should communicate the limitations associated with risk assessment tools.

Monitoring and Accountability Mechanisms

16. It is recommended that jurisdictions develop and enhance mechanisms for monitoring justice system performance in family violence cases, to support sound executive decision making and measure the impact of new initiatives. It is recommended that jurisdictions support the development of information systems, based on the collection of common key performance indicators, to enable evaluation of justice system performance. The development of common methodologies for examining programs is also recommended (for example, when evaluating abusive partner treatment programs) to facilitate knowledge exchange and advancement.

Elements of an effective response include the following:

- the use in all data collection systems of a family violence identifier to distinguish cases of spousal/partner abuse;
- identification and collection of justice system key performance indicators (such as charge and arrest rates, "drop" rates, conviction rates, dispositions, duration of offender treatment and supervision, offender compliance with conditions, charges for non-compliance and rates of re-offending) to enable comparisons both within and between jurisdictions;
- capacity to produce management reports on justice system performance (by-products of operational systems) for executive decision-making purposes;
- information system integration (from police to courts to corrections) so that individual cases can be tracked;
- use of research to inform policies and practices; and
- performance management to ensure that front-line workers comply with policy and procedures.

Training

17. It is recommended that each jurisdiction develop and implement a plan for the development and ongoing delivery of cross-sectoral training to new and existing staff dealing with family violence issues within the criminal justice system. This training should be based on the critical success factors identified below, to ensure an effective response to family violence. It is suggested that jurisdictions share training resources to avoid duplication of effort and to minimize the burden of developing course material. The work of the National Judicial Institute should be supported to ensure that the judiciary continues to receive education regarding the dynamics of spousal/partner violence and the impact of the criminal justice response.

The following best practices have been identified:

- integration of domestic violence training into pre-service training and additional annual training sessions to update information;
- assignment of training co-ordination to a specific individual or group;
- content that addresses information about the dynamics of family violence, the legislative remedies and options available—both criminal and civil—and the interplay between them, and the unique roles of particular parties (case studies are a useful method to "test" the learner's ability to apply the policies and procedures, as well as to create a common understanding of "real life situations" and the approaches to be used);
- specialized training for police and Crown Prosecutors on evidence collection and prosecution of domestic violence cases;
- specialized training regarding the dynamics of spousal violence for correctional services officials;
- a train-the-trainer approach, which facilitates training of large numbers in a cost-effective manner;
- training that underscores the partnership between people with expertise in family violence and people with knowledge of the particular sector or profession to be trained, ensuring a sound foundation for the development of the training content and the delivery strategy; and
- provision of training at the local level to build on resources available in the community, since successful training initiatives involve criminal justice professionals together with community representatives, in order to emphasize the community-justice partnership (training is not only a means to impart information but also a process of building community capacity and of enhancing critical relationships among players—an approach that contributes to a common understanding of the problem and of the appropriate means of intervention, as well as to a shared sense of responsibility).

Prevention

18. It is recommended that resources at the government, corporate and community levels be committed to broad-based prevention activities. An effective preventive strategy must address all stages of the continuum of family violence and include the following:

- programs for children and youth exposed to family violence or exhibiting aggressive behaviour;

- school-based healthy relationship courses to teach the elements of healthy relationships and acceptable and unacceptable behaviour to both adolescent boys and girls as they begin to date, and to teach the concept of respect for others and conflict resolution techniques in earlier grades, as well as anti-violence campaigns and programs, including sexual assault and harassment prevention;

- public education to change attitudes, which contribute to the continued existence of family violence, in order to help victims identify abusive behaviour, to inform them of assistance available, and to encourage individual and community action;

- early intervention measures, which seek to intervene early in relationships before abuse escalates to prevent further harm; and

- programs that enable abusive partners to address their abusive behaviour, preventing further harm to others.

Summary

An Effective Strategy to Respond to Domestic Violence

The elements of an effective response to domestic violence are common to each initiative undertaken and each focus of intervention:

- shared goals and objectives (that is, ensuring victim safety and holding offenders accountable) among all participants from a variety of disciplines;
- a sound procedural framework with clear protocols for intervention and information-sharing for each component, sector and discipline;
- commitment to co-ordination, collaboration and co-operation among all partners;
- training that emphasizes individual roles and responsibilities and links with other components;
- consistent policies that underscore commitment to goals at all levels of the organization;
- appropriate resources to provide services; and
- accountability mechanisms (for offenders, for justice system personnel, and for professionals of other systems and disciplines).

Within each jurisdiction, a comprehensive, co-ordinated strategy is needed to address the problem of domestic violence and the factors that contribute to it. Such co-ordination needs to occur across policy sectors (social, justice, education and health) and all levels within each jurisdiction: at the provincial level (to establish a policy framework); at the local community level (to co-ordinate services and to identify needs, gaps and solutions); and at individual level (to provide effective case management and conferencing mechanisms). The essential ingredients of an effective strategy addressing domestic violence within each jurisdiction include resources, a focal point of leadership and co-ordination, senior-level commitment and support to undertake these initiatives, and an accountability framework based on commitment to a long-range vision.

SECTION VI: SUPPORTING DOCUMENTS

1) MANDATE OF THE AD HOC WORKING GROUP

At their September 2000 meeting, federal, provincial and territorial Ministers responsible for justice identified the need to strengthen the criminal justice system's response to incidents of spousal/partner abuse. It was agreed that an ad hoc, federal, provincial and territorial working group would be formed to review the implementation and status of mandatory charging and prosecutorial policies related to spousal or partner abuse and that it would report back to Ministers on the results in one year. Ministers also requested that officials review legislative proposals made by several jurisdictions, including penalties for breach of restraining orders and reforms to bail provisions and reverse onus in bail hearings.

At the October 2000 meeting of the FPT Co-ordinating Committee of Senior Officials (Criminal Justice) (CÇSO), it was agreed that Ad Hoc Working Group should review the legislative proposals.

The Working Group was struck to review the 1983 spousal abuse charging and prosecutorial policies issued by the Minister of Justice and the Solicitor General through the years at the federal level, as well as similar policies issued by provincial and territorial justice ministries.

The Working Group was also asked to report on the following:

- the current status and application of the policies in all provinces and territories;
- the impact of the policies in ensuring an effective criminal justice response to incidents of spousal/partner violence; and
- any recommendations regarding possible options and measures for strengthening the policies and supporting programs.

To review related legislative proposals to amend the *Criminal Code*, including penalties for breach of restraining orders, and reforms to bail provisions and reverse onus in bail hearings.

To report findings and recommendations to the FPT Ministers responsible for Justice within one year.

The Ad Hoc Working Group will undertake its tasks in consultation with FPT working groups with related areas of expertise, including those working on criminal procedure, victims, diversity, equality and justice. The final report of the Ad Hoc Working Group will be submitted to FPT Ministers via CCSO and the FPT Deputy Ministers responsible for Justice.

2) 1983 FEDERAL DIRECTIVES TO POLICE AND CROWN PROSECUTORS

Government of Canada

news release

December 21, 1983

JUSTICE MINISTER AND SOLICITOR GENERAL TAKE STEPS AGAINST SPOUSAL ASSAULT

OTTAWA, December 21, 1983 -- Justice Minister Mark MacGuigan and Solicitor General Bob Kaplan today announced that policy directives have been issued to instruct the Royal Canadian Mounted Police and Crown Attorneys investigating and prosecuting spousal assault cases in the Yukon and Northwest Territories.

Spousal assault is a serious problem in Canada. According to the Canadian Advisory Council on the Status of Women Report on Wife Battering, one in ten Canadian women is beaten by her husband or partner, and about 20 per cent of all murder victims are women killed by their husbands.

While any type of assault is an offence under the *Criminal Code*, the Criminal Justice System, including some law enforcement officers and prosecutors, generally has perceived domestic violence as a family problem rather than a crime. As a result, many complaints of spousal assault have not been adequately investigated and prosecuted where reasonable evidence was established.

Canada

"These directives are meant to ensure that in the territories, spousal assaults are treated as any other crime of violence", said Dr. MacGuigan. "Women must be given the full protection of the law if we are to stop this violence in Canadian homes," he added.

Mr. Kaplan said, "These directives, which apply exclusively to the territories, reflect the general law enforcement policy of the RCMP governing spousal assault. This policy has been established in response to public concern over the victimization of women and involves specialized RCMP training on the laying of charges in cases of spousal assault. I look forward to the adoption of this approach by other jurisdictions in Canada".

The directives require that complaints of spousal assault be investigated immediately and thoroughly by a police officer. If there are reasonable and probable grounds to believe an assault has occurred, the investigating officer should lay criminal charges. Similarly, when charges have been laid, the Crown Attorney will proceed with the case in all but the most exceptional circumstances. One important effect of these provisions is that they remove the responsibility and blame for pressing charges from women, who often fear retaliation.

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Ref.: Bill Corbett
(613) 593-4972

(version française disponible)

Attachment

RECOMMENDED POLICE DIRECTIVE - SPOUSAL ASSAULT

It is the purpose of this directive to require the full investigation, for prosecution, of cases involving spousal assault and measures for the protection of and assistance to victims. The objective is to take decisions involving prosecution out of the hands of the victim.

INVESTIGATION AND ARREST

1. All complaints of domestic violence involving spousal assault should be investigated immediately and thoroughly, with the intention of charges being laid for court prosecution, irrespective of whether the assaulted spouse wishes to proceed with charges. An early objective of the investigation should be the protection of and assistance to victims.

2. Polices officers should be familiar with and acquaint all victims with community resources such as emergency shelter, legal aid, counselling facilities and welfare services, and assist them in contacting these resources.

3. Where investigation reveals reasonable and probable grounds to believe a serious indictable offence has been committed as part of a domestic dispute, the investigating officer shall arrest the suspect unless, as set out in section 450(2)(d) of the *Criminal Code*, he has reasonable grounds to believe that the public interest, having regard to all the circumstances including the need to establish the identity of the suspect, secure and preserve evidence, or prevent the continuation or repetition of the offence, may be satisfied without so arresting the suspect. Those charges most likely to arise in this context are: assault - section 245, assault with a weapon or causing bodily harm - section 245.1, aggravated assault - section 245.2, sexual assault as set out in 246.1, 246.2, 246.3, or weapons offences, section 83 to section 89 of the Code. If an arrest is thought necessary, the suspect shall be held in custody pending completion of the investigation and determination of the appropriate terms of release, subject to the requirement under section 454 of the *Criminal Code* to take the suspect before a justice within twenty-four hours.

SWEARING OF CHARGES

4. Where investigation supports the conclusion that a spousal assault has been committed, charges should be laid by the investigating officer, the victim served with a subpoena for the earliest possible trial date, a complete brief supplied to the Crown Attorney and a case set to the earliest convenient court docket for appearance. This directive should be considered mandatory and completed irrespective of the wishes of the victim.

JUDICIAL INTERIM RELEASE

5. During the investigation, the investigating officer should consider what terms would be appropriate in an order for judicial interim release, to protect the victim, for example, an order to abstain from communication of the victim under section 457(4)(d) of the Code. Where no terms are considered necessary, and an arrest has been made, the investigating officer should take the accused before a justice of the peace for release pursuant to sections 454 and 457 of the Code. Where conditions are considered necessary, or release is to be opposed, a bail report shall be prepared for the Crown Attorney, the accused brought before a justice under section 454 of the Code within twenty-four hours, and remanded for a bail hearing under section 457(1) of the Code. A copy of the interim release terms shall be provided to the victim where there are provisions contained therein for his or her protection. Where the victim has gone to another community, the nearest police detachment shall be informed of the release order and the conditions therein for the protection of the victim.

6. Any breach of the bail terms should be followed by arrest as provided by section 458(2) of the Code and a further bail review under section 458(3) and (4) of the Code.

PEACE BONDS

7. The use of the peace bond procedure set out in section 745 and 746 of the *Criminal Code* should not be pursued as an alternative or recommended in cases of spousal assault.

RECOMMENDED DIRECTIVE TO PROSECUTORS SPOUSAL ASSAULT

It is the purpose of this directive to require the prosecution of spousal assault cases where there is sufficient evidence, and to provide support to the victim throughout the court process.

REVIEW OF THE CASE IN TERMS OF RELEASE

1. Where a prosecution brief is received involving a case of spousal assault, the prosecutor should review the brief for completeness, see that the charge has been sworn by the investigating officer, and meet with the officer to determine the conditions for bail that will give maximum protection to the victim. He should see that the case is proceeded with in court without undue delay. At the bail hearing, he should press the court for terms that will protect the victim and oppose bail where the circumstances of the case require it.

PREPARATION OF WITNESSES

2. When a prosecution brief has been reviewed with the investigating officer, the prosecutor shall meet with the victim to determine her reliability as a witness, explain the prosecution policy, explain what is expected of a witness in court, and encourage the victim to testify on behalf of the Crown. He should also satisfy himself that the victim has been in touch with available community services and is aware of the release conditions if any.

DISCONTINUATION OF PROCEEDINGS

3. After reviewing the complete prosecution brief with the investigating officer and interviewing the victim, the prosecutor may form the view that the case is not appropriate for prosecution and stay or withdraw the charges. Such a decision shall not be made without prior discussion with the Regional Director and one of the General Counsel, Criminal Prosecution Section or the Assistant Deputy Attorney General (Criminal Law) in Ottawa. Such a decision should consider any history of prior assault, the safety of the victim and other family members, and any threats of intimidation. The termination of a case short of court prosecution should be considered only in the exceptional case and will be made on behalf of the Crown and not by the victim.

SENTENCE

4. Where prosecution results in conviction, the prosecutor shall recommend the sentence which in his view would be appropriate were it not a case of spousal assault. Where an adequate sentence is not obtained, an appeal of sentence will be pursued. The prosecutor in speaking to sentence, shall treat the spousal assault case in the same way as he would treat any other assault on a victim who cannot protect his or herself.

ANNUAL REPORT

5. An annual report summarizing the cases of spousal assault prosecuted and the results will be prepared at the direction of the Regional Director and sent to the General Counsel, Criminal Prosecution Section, on the anniversary of the implementation of this policy.

3) OVERVIEW OF SPOUSAL ABUSE PROGRAMS BY JURISDICTION

POLICY/ PROGRAMS	NEWFOUNDLAND AND LABRADOR	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC
1. Training	- A Violence Awareness Training Program has been piloted with staff in four key departments and community agencies, using a train-the-trainer model. - Regional training co-ordinating committees are being established to organize and deliver ongoing sessions. - Across the province, 116 facilitators have been trained. - A facilitator's manual, participants' manual and PowerPoint presentations have been developed and printed.	- Training has been conducted with implementation of the *Victims of Family Violence Act(1996)* (train-the-trainer programs, with police, Victims' Services and Transition House team). - As a result of the Evaluation of the act, Victim Services has developed a new presentation for training police on the Act. - The family violence co-ordinator teaches a core course at the police academy for new recruits, including 12 hours on domestic violence, child abuse, elder abuse and sexual assault. - Once a year, training is offered for new police officers and veterans. This is done by a team of Crown Prosecutors, Victim Services staff, the family violence co-ordinator and the deputy court registrar.	- Mandatory training is provided to all justice workers in conjunction with the implementation of the Framework for Action Against Family Violence in 1996-97. A training program for all justice workers is to be delivered in 2002-03, in anticipation of implementation of the *Domestic Violence Intervention Act*. - In response to the Russell Report, the Justice Learning Centre was established (a partnership between the Department of Justice and Nova Scotia Community College) to provide justice-related training, including family violence training.	- Extensive training was provided over a two-year period, with the introduction of protocols. Protocols were launched at a one-day symposium, with one-day follow-up multi-disciplinary training on a regional basis and a second day for justice professionals only. - Protocols are to be revised by 2003, with training to follow. - The Government of New Brunswick is committed to revising the existing protocols (women abuse and child abuse protocols), as well as announcing a refreshed training strategy in 2003. - The province contracted with the Muriel McQueen Fergusson Centre for Family Violence Research (MMFCFVR) to develop and deliver a woman abuse curriculum using a train-the-trainer approach. The	- Pre-service training for police in domestic violence is provided by the provincial police college. - There is a two-day training program on the dynamics of spousal violence for corrections officials. - A training course for prosecutors is held every 18 months. - Training done within two weeks of the introduction of the new sexual assault policy (second edition) which will have a domestic violence component. - Joint training is provided for police, Crown Prosecutors and child protection staff in child sexual abuse, based on a multi-sectoral agreement. - Local committees provide training opportunities. - Education for provincial

POLICY/ PROGRAMS	NEWFOUNDLAND AND LABRADOR	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC
		Sessions for specially designated justices of the peace are held approximately once a year; information sessions for other professionals are held as requested. - Training on new woman abuse protocols and policies is ongoing.		centre currently offers a certificate program in family violence.	judges on woman abuse.
2. Co-ordinating Mechanisms	- Violence Prevention Initiative: - Committee of Ministers. - Provincial Co-ordinating Committee. - Six regional committees with government-community partnership. - Family Violence Protocols provide for co-ordination among Victim Services, Probation and Correctional Centres. - Provincial Strategic Social Plan and Justice Strategic Plan both require co-ordination as an underlying principle for future programs and policies. - Violence Liaison Officer	- Premier's Action Committee on Family Violence just extended for another five years. - Five interagency committees composed of multiple service providers, in five regions co-ordinate services locally; outreach workers are employed in four regions through the Transition House Association.	- Family Violence Prevention Initiative (government-community committee) disbanded in 2000 interdepartmental committee of five departments chaired by Department of Community Services. - Some departments retained family violence committees (including Justice). - Some communities kept Interagency Committees on Family Violence (originally 17) to co-ordinate services, public education. - Deputy Ministers' Leadership Committee on Family Violence established 2002.	- Women's Issues Branch created in Executive Council office. - Deputy Ministers Steering Committee on Violence Against Women; six interdepartmental project teams tasked with implementing government's response to Minister's Working Group on Violence Against Women. - Caring Partnerships initiative funded solely by Muriel McQueen Fergusson Foundation - to set up regional awareness, programs, services, and prevention committees in 12 locations. - Regional Children-at-risk-Teams (CART) have reps from agencies serving	- The Interministerial Co-ordinating Committee on spousal, family and sexual violence. - Local Co-ordinating Committees to co-ordinate services and initiatives locally (protocols to co-ordinate the action of local committees). - Follow-up on policy undertaken by the Interministerial Committee. - Local co-ordinating roundtables.

POLICY/ PROGRAMS	NEWFOUNDLAND AND LABRADOR	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC
	- Program in correctional centres provides co-ordinated information access to victims.		- Established province-wide police Domestic Violence Case Co-ordination Program to enhance police capacity in co-ordinated case management (identifying high risk situations, information-sharing and referrals).	abused women under Department of Family and Community Services.	
3. Support Services **3.1 Victim Services**	- Newfoundland and Labrador Housing Corp. has priority policy for family violence victims. - Department of Justice program. - System-based. - Professional staff in the 10 regional offices and 1 provincial office. - Services available include information, court preparation, counselling, referrals, follow-up, Victim Impact Statement Program, Victims' Legal Fund Program and Professional Services Counselling Program. - Services available to those 16 and older.	- Victim Services, Office of the Attorney General, operates throughout the province and provides assistance at all stages of the criminal justice process. Services include information and referral, short-term counselling, Victim Impact Statement (VIS), compensation, court preparation and support, assistance under the *Victims of Family Violence Act*.	- Department of Justice Victims' Services Division. - RCMP volunteers. - Halifax Regional Police Victim Services (follow-up calls next day or within 24 hours after police called to domestic dispute); Bridgewater Police (victim service component); Cape Breton Regional Police (Family Violence Crisis Response Team).	- Four police-based Victim Services. - RCMP Volunteers. - Department of Public Safety Victim Services located throughout province offer support, trauma, short term counselling, VIS, VIS Transportation program, counselling referrals, compensation for victims of crime. - Community agencies provide services and prevention programs aimed family violence: Beausejour Crisis Intervention Centre; Kent Co Family Violence Prevention Program; Restigouche Family Violence Intervenors	- Department of Justice Victims' Services (called "CAVAC") in 11 sites around the province, support provided to go through the justice system. - Transition houses assist victims. - Transmission of specific information regarding offenders to spousal violence victims through correctional services. - Tracking method for identifying spousal violence cases, in order to identify and inform victims quickly, if need be.

POLICY/ PROGRAMS	NEWFOUNDLAND AND LABRADOR	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC
				Fredericton Sexual Assault Centre.	
3.2 Shelters	- Eight transition houses. - Eight women's centres. - One sexual assault centre (province-wide service). - One provincial association against family violence (umbrella organization for shelters).	- One transition house. - Four staff members providing outreach services in five regions. - Three second-stage housing units (self-contained apartment units; services through outreach worker).	- Nine transition houses. - One Mi'kmaq Family Treatment Centre (two sites). - Five second-stage housing facilities. - Six women's centres. - Two counselling programs for abused women. - Two sexual assault centres.	- 15 shelters. - One dedicated Aboriginal shelter.	- approximately 90 shelters/ transition houses.
3.3 Programs for Children Exposed to Family Violence	- Counselling through Health and Community Services.		- No formal programs, except as provided by transition houses on a limited basis, Kentville Community Action Program for Children (CAPC) program.	- Limited programming by some shelters.	- Child Welfare studying this issue to identify where children are involved in domestic violence cases; project involving Health Services and Justice in progress.

POLICY/ PROGRAMS	NEWFOUNDLAND AND LABRADOR	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC
3.4 Abusive Partner Programs	- Treatment in facilities: - Level I Education group run three times a year in St. John's, 8-10 offenders per session, 10-12 sessions of 2-2.5 hours, most are incarcerated but do accept offenders on probation, most take it on recommendation of court as part of prison term or at discretion of officer supervising case; also periodically offered in other institutions. - Level II - more personalized treatment, targeting offenders who have completed Level I or comparable in community, only offered in 1 institution in the province. - Treatment in community contract with John Howard through Learning Resource Program, a low intensity program for probation or conditional sentence offenders under supervision, mandated, 2 sites with other sessions periodically offered by probation.	- One Corrections-based program provided across province as required (Office of Attorney General, Community Justice Resource Centre, Turning Point program). - Most court-ordered but voluntary too.	- Community-based programs funded by Department of Community Services. - One Mi'kmaq Family Treatment Centre (not funded). - Two probation-based groups.	- In 1999-2000, funded 49 partner abuse programs and 121 anger management programs in province, court-mandated under correctional supervision (probation or conditional sentences). - NB-Canada corrections pilot project; incarcerated provincial offenders provided federal programs.	- Some programs exist: GAPI Program, treatment ordered by the courts as a condition of probation.

POLICY/ PROGRAMS	NEWFOUNDLAND AND LABRADOR	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC
	- Psychiatric hospital for mental health (non-justice) clients.				
4. New Initiatives (non-justice)	- Crown is launching a pilot to fast-track family violence cases through the court system in Central Newfoundland - Department of Human Resources and Employment is adopting all recommendations of its government-community committee, which has analysed the Department's response to victims of violence. - Five-year Strategy Against Violence ended March 2000; new five-year Violence Prevention Initiative implemented; aim is improved integration of violence prevention in departments and improved co-ordination regionally with community participation. - Anti-Violence Policy Framework developed for use in four key departments. - Public education (school survey and violence	1. Five-year Family Violence Strategy and Premier's Committee renewed. 2. Public awareness/social marketing strategy developed: - Phase 1 - survey of Islanders attitudes toward violence/abuse. - Phase 2 - targets professionals people said they would turn to for help; focus groups to assess attitudes and identify their needs. 3. Training for professionals as protocols developed. 4. Projects - as above. 5. Workplace Violence. 6. Policy/protocol development. 7. Physician training in family violence and pre-natal psycho-social	- *Domestic Violence Intervention Act* passed November 2001—not yet proclaimed—provides for emergency protection orders.	See 2.0. - "It's Up to Me" on healthy relationships course incorporated into Department of Education curriculum (optional). - Making Waves dating violence program for teens (weekend workshops with teens who then lead anti - dating violence activities in home high school). Both are community-based by CARR and Making Waves. - Community Caring Partnerships Committees led by Muriel McQueen Fergusson Foundation, public education and co-ordination.	- Confidentiality legislation sanctioned in spring 2001 to permit the exchange of information where there is violence or the threat of violence. - Public awareness campaign focused on one issue for three years including: 1) spousal/dating violence. 2) sexual assault - Correctional Services of Quebec (CSQ) offers an evaluation service in regards to judicial interim release of violent spouses. - CSQ intends to implement the *Correctional Services of Quebec Act*, which contains provisions related to spousal violence. - CSQ verifies the consistency of conditions placed on violent spouses at different stages in the judicial and correctional

POLICY/ PROGRAMS	NEWFOUNDLAND AND LABRADOR	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC
	prevention materials and modules; brochures on assault).	assessment tool.			systems.
5. Reports	- Women's Policy Office has just released its Provincial Survey on Attitudes toward Violence (March 2002). - Five-Year Strategy Against Violence Report. - Peace Bond Study. - "Moving Forward: Responding to the Needs of Violence," Department. of Human Resources and Employment.	- Monitoring Study of *Victims of Family Violence Act* from 1998; Evaluation of Act (August 2001). - Family Violence and Justice System Response Report (March 2000). - Literature review. - Evaluation of Transition House and sexual assault centres. - Police Response and Children Exposed to Domestic Violence report. - Psychosocial Assessment Tool for Physicians. - Restorative Justice and Women Who Are Victims of Violence (June 2002).	- Russell Report (Framework Review) (2001); Maxwell-George Inquiry (Department of Justice) and Case Review (Department of Community Services) (2000); Framework Evaluation (Report and Appendices, 1997); Victim Support Services Evaluations (2); Family Violence Tracking Project (1995); Law Reform Commission Report (1995); Domestic Homicide Review (1995).	- Minister's Working Group on Violence Against Women: Strategic Framework (2001), A Better World for Women: Government Response to Minister's Working Group on Violence Against Women (2001). - "Children Come First" Report followed Jacqueline Brewer's death, government will use it as a guide, some recommendations already implemented. - Public Safety Department produces annual report on family violence assaults, homicides, sexual offences. - Child Death Review Committee Report.	- Coroner's inquest into a murder-suicide; Gaumont-Lirette findings led to new legislation permitting more liberal release of information to ensure professionals aware of a potentially lethal situation can share that information.

POLICY/ PROGRAMS	NEWFOUNDLAND AND LABRADOR	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC
6. Data Collection	- Over sample requested with 1999 GSS. - Victim Services statistics. - Police and court date.	- Repeat Public Attitude Survey in five years. - Data collected on *Victims of Family Violence Act*. - No police tracking data. - Some court data. - Victim Services statistical reports.	- Internal police audit. - Some court and corrections data on JOIS; periodic review - no ongoing individual case tracking or annual reporting. - Data collection system planned to track emergency intervention orders (DVIA).	- Public Safety Department audits municipal police to ensure they have a policy; RCMP has national policy. - Woman abuse statistics system implemented (police and court aggregate data); victim-offender relationship variable in new court info system (NBJIS); victim services component of Client Information System went on-line April 1, 2002.	- Extensive annual police report on conjugal violence (2000 most recent). - Justice system issues the number of cases but a number of accusations can involve one offender.

OVERVIEW OF SPOUSAL ABUSE PROGRAMS

BY JURISDICTION

POLICY/ PROGRAMS	ONTARIO	MANITOBA	SASK	ALBERTA	BRITISH COLUMBIA
1. Training	- Ongoing training to support provincial DVC program (now in 22 sites). - Training plan to be developed for the *Domestic Violence Protection Act.* - Setting up training program as part of new domestic violence strategy for police, Crown Prosecutors, Victim/Witness Assistance Program (VWAP), cultural interpreters, probation officers. - Two annual conferences for Crowns with domestic violence component, specialized one-week course in summer mandatory for all new Crowns or Crowns looking to be domestic violence specialists. - VWAP annual training for Crown Prosecutors (two days) introductory domestic violence training for all newly hired Crowns.	- Extensive training conducted for the *Domestic Violence and Stalking Prevention, Protection and Compensation Act.* - Currently mandatory one-day training for all Winnipeg police officers in family violence underway; 60 officers/session and recruit training. - Regular training for Crown Prosecutors. - Regular training for RCMP.	- Training is provided for police at Saskatchewan Police College and RCMP depot/F Division. This includes presentations on the dynamics of family violence and the applicability of provincial and federal legislation when responding to family violence situations. - In 1995 initial information and training on the *Victims of Domestic Violence Act (1995)* and family violence was provided to police, courts, Justices of the Peace, victim services co-ordinators and representatives of community organizations working in the area of family violence. - In 2001–02 training on how the justice system responds to family violence was delivered across the province to police, funded agency staff and related community organizations that work in the area of family violence	- *Protection Against Family Violence Act (1999)* - Office for the Prevention of Family Violence (OPFV) offers training - day education on family violence and the Act, community planning to mobilize partnerships. - Police: train-the-trainer approach used initially prior to proclamation of Act, trainer identified from every police agency (RCMP, Municipal, First Nations), three days of training offered by team of OPFV, Policing Services, Crown; training video and manual given to every officer/trainer; centralized training followed-up by holding annual community level training co-ordinated by Justice and Children's Services. **Family Violence Training** - Annual training at Justice College offered by Alberta Justice which includes Crown, police, corrections, and provincial Victims	- Extensive training conducted with introduction of Violence Against Women in Relationships (VAWIR) policy in co-ordination with police, Crown and victim services (VS) workers. - RCMP now training every officer in relationship violence and criminal harassment policy. - Training program available for Crown Counsel. - Training on advanced interviewing and investigation skills available for police, Crown and victim service workers. - Criminal harassment training available for all justice system personnel. - Safety planning and use of cell phone technology training available for police and victim services workers.

POLICY/ PROGRAMS	ONTARIO	MANITOBA	SASK	ALBERTA	BRITISH COLUMBIA
	- Bail Advocacy Training Program for Crowns (Fall 2002). - Ontario Police College Domestic Violence training for specialized investigators (Ministry certified) including use of Domestic Violence Supplementary Report Form. - Training to be provided to 160 new probation staff to be hired.		[31 multi-disciplinary sessions in 20 communities (April 2002)]. Some individuals who attended the sessions will be identified as future trainers and will receive additional information and practice. - A module on family violence included in the Victim Services Volunteer Training Manual is used by police-affiliated victim services co-ordinators for training program volunteer support workers.	Services Association.	- Developing a new training program for risk assessment for victim safety for police and victim service workers. - All Crown support staff is trained in *Victims of Crime Act* procedures. - Training for first-line responders.
2. Co-ordinating Mechanisms	- Two interministerial committees at the Assistant Deputy Minister (ADM) and policy/program level co-ordinate and implement the Domestic Violence Justice Strategy (exclusive Domestic Violence focus). - Creation of the Victim Services Division (Ministry of the Attorney General) within the Justice ministries to integrate and to co-ordinate the delivery of services to victims of crime. - Two interministerial committees at the ADM and policy/program level co-ordinate violence against women prevention initiatives led by Ontario's	- Interdepartmental Committee-working group of officials.	- The Interdepartmental Committee on Family Violence consists of representatives from eight government departments. The committee facilitates an integrated government response to the issue of family violence. - Saskatchewan Towards Offering Partnership Solutions to Violence Inc. (STOPS to Violence) is a partnership of community organizations, individuals and provincial government departments that works towards the elimination of relationship violence and supports the development of partnerships at community level. Local partnership committees	Interdepartmental Committee on Family Violence. - Local interagency committees. - Regional authorities responsible for funding decisions and range of regional services. - Within Justice, co-ordinating committees for Crowns and police.	- There are 50 community co-ordination committees, which are not funded. - A community co-ordination handbook is available.

POLICY/ PROGRAMS	ONTARIO	MANITOBA	SASK	ALBERTA	BRITISH COLUMBIA
	Women's Directorate. - Joint Interministerial Committee on Domestic Violence (short term) chaired by Justice Baldwin to develop a five-year implementation plan. - Local DART (Domestic Assault Review) Teams (case review of probation cases), Local Domestic Violence Co-ordinating Committees and Domestic Violence Court Advisory Committees (DVCAC). - Community Co-ordinating Grants, providing provincial funding for local community co-ordinating mechanisms.		exist in eight communities. STOPS to Violence meets regularly with the Interdepartmental Committee on Family Violence. - The Department of Justice Internal Committee on Family Violence has representatives from the Law Enforcement Services, Courts, Prosecutions, Victim Services, Community Services and Policy, Planning and Evaluation branches. It meets regularly to discuss justice issues in the area of family violence.		
3. Support Services **3.1 Victim Services**	- Newly created and integrated Victim Services Division (Ministry of the Attorney General) for Justice ministries. - Victim Services Division Victim/Witness Assistance Program (now in 42 sites with plans to expand province wide to 54 sites). - VCARS (Victim Crisis Assistance and Response Service) in some sites, volunteer organization.	- Department of Justice offers full range of services for non-family violence victims; criminal injuries compensation for all victims. - See Women's Advocacy Program. - Co-ordination of victim services under development.	- There are 17 police-affiliated victim services programs (RCMP/ municipal police services) to respond to victims of crime and traumatic events. Each program has one co-ordinator and a number of volunteer support workers. - Eight Aboriginal resource officers are located in five police-affiliated victim services programs. They respond to the needs of Aboriginal victims.	- Most are police-based, co-ordinated within Department of Justice by Victim Services Program.	- Victims Service Division funds: - 91 police-based Victim Service agencies serving 113 police jurisdictions by end of fiscal year. - There will be 62 community based victim services programs including programs for male survivors and Aboriginal victims by end of fiscal. These programs will also provide services for sex assault victims.

POLICY/ PROGRAMS	ONTARIO	MANITOBA	SASK	ALBERTA	BRITISH COLUMBIA
	- Police-based victim services, in some large communities.		- Three urban centres have Victim/Witness Co-ordinators who work closely with courts. - Six sexual assault centres and eight family violence outreach programs are funded through Saskatchewan Social Services. - Eight Aboriginal Family Violence Programs, funded through Saskatchewan Justice, offer holistic programs that serve victims, offenders and their families according to community need. The programs are offered by community-based organizations that employ Aboriginal service providers.		- All co-ordinated locally by protocols.
3.2 Shelters	- 99 shelters. - No safe homes. - Eight Aboriginal shelters. - There are approximately 100 counselling programs for abused women (individual and group). - There are approximately 119 transitional support workers throughout the province.	- 10 shelters. - Eight women's resource centres. - Four second-stage housing facilities Urban Support Programs: - Immigrant women's counselling service. - Community health clinic work with victims, children, and men who	- There are 13 shelters (10 funded by Saskatchewan Social Services) and 2 second-stage housing facilities offering services to women and children.	- 27 shelters and rural family violence prevention centres and 2 second-stage housing projects.	- 86 transition houses; 16 safe home programs; nine second-stage housing programs. - 37 women centres (funding ceases March 31, 2004).

POLICY/ PROGRAMS	ONTARIO	MANITOBA	SASK	ALBERTA	BRITISH COLUMBIA
		abuse. - Ma Ma Wi Chi Itata - multiple service centre, social service based, funds family violence counselling program. - Native Women's Transition Centre: longer term residential support centre. - Laurel Centre: women with unhealthy coping behaviours and addictions as a result of child sexual abuse. - Community Health Centre: family violence counselling unit. - Three supervised access services for families with violence in background. - Private contract funding for people who work with abusive men outside Winnipeg. - Men's Resource Centre: counselling for adult male sexual abuse survivors, information, referral. - Couples counselling (strict screening protocol, research component).			

POLICY/ PROGRAMS	ONTARIO	MANITOBA	SASK	ALBERTA	BRITISH COLUMBIA
3.3 Programs for Children Exposed to Family Violence	- Approximately 131 support groups within the Early Intervention Program for Child Witnesses of Domestic Violence, based on a concurrent group model with groups for children aged 4-16 and separate groups for mothers on issues related to their children/parenting.	- Short-term and longer term counselling programs for children. - Supervised access centres for families with exposure to domestic violence.	- Four Children Who Witness Violence programs are funded by Saskatchewan Justice in three urban centres. Each program offers parenting groups. - Health districts determine what services they offer to children exposed to family violence and often have limited mental health resources available. - Examples of other programs offered by community-based organizations and not funded by government include a children's group run by a shelter and a violence intervention program in schools.	- With the Calgary Domestic Violence Court only, funding made available for children witnessing violence. - Group and individual counselling for children and youth exposed to family violence; for those who are abusive or aggressive at home or school; for parents. - Crisis nursery and emergency respite (for children up to 8 years old).	- 55 programs for individual and group counselling for children exposed to domestic violence; support to parents.
3.4 Abusive Partner Programs	- Partner Assault Response (PAR) Programs are funded by Ministry of the Attorney General (MAG) in 25 court jurisdictions (35 programs operating in total). - All programs include a partner outreach component; now Victim Services Division (MAG) funded. - Plans to roll out PAR Programs to all 54 court jurisdictions by March	- One Partner Abuse Short Term (PAST) provincial program offered through seven probation offices and six institutions (12 two-hour modules offered in various configurations—days, evenings, weekends—contracted out, zero tolerance policy; breached if late for session). - One long-term program offered through Headingley (provincial corrections facility)	- Ten Alternatives to Violence Programs for Abusive Men, funded by Saskatchewan Health, offer two phases of programming sixteen weeks in duration. Most groups are co-facilitated by mental health and justice workers. There is a high drop out rate initially. Of the participants approximately 50% are court-ordered and 50% are Aboriginal. Aboriginal facilitators are used when	- 15 to 20 programs not currently funded. - Proposal in to fund treatment programs under province-wide Treatment Framework, which will define criteria and standards, have evaluation component, three-year phase-in.	- Corrections staff will deliver "psycho-educational" programs on Respectful Relationships; this will be available to spousal abuse offenders throughout the province. - Contracted programs will provide treatment and therapeutic programs in most centres throughout the province to offenders.

POLICY/ PROGRAMS	ONTARIO	MANITOBA	SASK	ALBERTA	BRITISH COLUMBIA
	2004. - Minimum 16-week group counselling. - Court mandated, no funded programs for voluntary participants but will accept on a fee for service basis.	Domestic Violence Unit specifically for domestic violence offenders. - Long-term program (a recommendation of Lavoie) pilot tested and plan to expand province-wide with resources.	appropriate. - Saskatchewan Corrections and Public Safety offers three Alternatives to Violence Programs.		
4. New Initiatives (non-justice)	- $5M in 2002/03 for the enhancement of safety, security and accessibility of violence against women shelters. - Early Intervention Program for Child Witnesses of Domestic Violence. - Transitional Support Worker Program. - Hospital-based Domestic Violence Pilot Program - in 10 sites, screening for domestic violence in hospitals/emergency rooms. - Community Report Card Pilot Project - four pilot sites. - Province-wide Assaulted Women's Helpline and enhanced crisis line services for the Francophone community.	- Expanding aboriginal shelter. - Men's Resource Centre. - Supervised access centres for families with abuse. - Benefit/pension plan for all funded staff. - Couples counselling. - Ongoing public awareness campaign (November is Family Violence Prevention Month).	- STOPS to Violence is developing a protocol template for the use of communities that want to implement an integrated community approach to dealing with incidents of violence in the family.	- Treatment for Abusive Men Framework. - Elder Abuse Action Plan under development. - Social Marketing currently running 13th Family Violence Prevention Month campaign. - Cross-ministry Seniors Initiative with 10-year plan to be developed.	

POLICY/ PROGRAMS	ONTARIO	MANITOBA	SASK	ALBERTA	BRITISH COLUMBIA
	- Joint Children's Aid Society/Violence Against Women Model Collaboration Agreement and training.				
5. Reports	- May–Iles murder–suicide inquest (213 recommendations). - Joint Committee on Domestic Violence/Justice Baldwin Report. - Metro Woman Abuse Council Toronto monitoring report of two specialized courts. **- Moyer Report (evaluating six pilot DVC sites).** **- Hadley murder-suicide inquest.** **- Safety First Audit Pilot Project – Windsor, using tool to conduct audit on how well Justice and other agencies respond to domestic violence (three external agencies audit a fourth).**	- Lavoie inquiry - 911 inquiry (October 29, 2002). - Winnipeg Family Violence Court evaluation. - Police Tracking Study. - Evaluation of Partner Abuse Programs (due next year). - Pedlar Report (1991).	- Two evaluation reports on the *Victims of Domestic Violence Act* from 1996 and 1998 are available. **- A study is underway at two sites to track incidents of spousal violence from police report through the court system, including interviews with police, prosecutors, victim services co-ordinators and victims of spousal violence.**	- Evaluation of the *Protection Against Family Violence Act.* - Alberta Justice Spousal Abuse Status Report.	

POLICY/ PROGRAMS	ONTARIO	MANITOBA	SASK	ALBERTA	BRITISH COLUMBIA
6. Data Collection	- No family violence flag or ability to identify family violence cases except cases currently streamed into the specialized courts. - Data collection has been through periodic surveys of cases at domestic violence courts. - Integrated justice project still under development. - Beginning to collect court results.	- Winnipeg Family Violence Court data. - Police data on calls for service and charges laid.	- The lack of technology at the Court of Queen's Bench presents challenges when conducting research on the use of orders such as emergency intervention orders under the *Victims of Domestic Violence Act.* - The identification of family violence incidents at police level is inconsistent among municipal police services and RCMP.	- Court data on of the *Protection Against Family Violence Act.* - Policing data supplied quarterly to Justice on incidents responded to and action taken. - Women's Shelter Information System–re-design planned.	- Police, court, corrections all maintain statistics on spousal assault cases. - Monitoring conducted by Director, Legal Operations and Justice Programs, with recommendations to Prosecutions Branch and Regional Management committees; local co-ordination committees identify issues to Crown member.

OVERVIEW OF SPOUSAL ABUSE PROGRAMS

BY JURISDICTION
PROVINCE/TERRITORY

POLICY/ PROGRAMS	YUKON	NORTHWEST TERRITORIES	NUNAVUT	CANADA
1. Training	- Chief Judge Territorial Court set up training for Justices of the Peace on the *Family Violence Protection Act (1999)*. - Victims Services provides eight training sessions a year to police, Crown, community; ongoing.	- None	- None.	- RCMP provides all cadets training on spousal violence including police sensitivity to victims. RCMP provides members with a wide range of training, materials and activities related to spousal assault including the following: "Violence in Relationship Training," "An Investigative Guide for Sexual Offences," the video "Violence Against Women, Breaking the Silence," the CD-ROMs "Family Violence—Not a Private Problem" and "Family Violence in Aboriginal Communities." - RCMP contributes to multiple initiatives related to family violence including awareness and prevention programs, risk assessment tools, data collection, research and evaluation, and training on charging policies. In March 2002 the RCMP held a National Spousal/Partner Assault Workshop. - RCMP has an Investigative Guide for Sexual Offences, to provide information on appropriate sexual assault investigations. The RCMP also supports community-based workshops on victim's issues, sexual assault and violence in relationships. - Correctional Services Canada (CSC) and the National Parole Board (NPB) provide members training on family violence. - NPB provides training to members regarding the impact of victimization and the role of victims and

POLICY/ PROGRAMS	YUKON	NORTHWEST TERRITORIES	NUNAVUT	CANADA
				NPB hearings. - Policy Centre for Victims Issues (PCVI) assisting in development of manuals for Victim/Witness Assistants in the Territories. - First Nations Family Violence Course for First Nations police officers. - *A Handbook for Police and Crown Prosecutors on Criminal Harassment* (1999) provides guidelines for law enforcement and other justice officials regarding spousal violence and stalking.
2. Co-ordinating Mechanisms		- Coalition Against Family Violence - This is a coalition of government, RCMP and NGOs in Yellowknife.	- None as of yet, identified as a priority.	- Established in 1988, the current Family Violence Initiative (FVI) is a $7-million per year, multi-disciplinary interdepartmental co-ordinated federal initiative. It focuses on: promoting public awareness of the risk factors of family violence and the need for public involvement in responding to it; strengthening the criminal justice system and other systems' response; and supporting data collection, research and evaluation efforts to identify effective interventions. - FVI is complemented by other, related federal initiatives—in particular, the National Crime Prevention Centre (NCPC) and the Policy Centre for Victims Issues (PCVI). - NCPC has a National Strategy on Community Safety and Crime Prevention aimed at reducing crime and victimization by addressing their root causes through a social development approach. The Strategy places a particular emphasis on preventing violence against children, youth, women and Aboriginal people. The Strategy, which began in 1994, is currently in Phase 2 (1998–2003) and receives $32 million per year. An increase of 145 million over four years was announced

POLICY/ PROGRAMS	YUKON	NORTHWEST TERRITORIES	NUNAVUT	CANADA
				in 2001. - PCVI has been allocated $5 million per year (2000-05) for strengthening the role of victims and facilitating their participation in the criminal justice system, including victims of spousal violence. It supports bi-annual meetings of the Federal-Provincial-Territorial (FPT) Working Group and Provincial Directors of Victim Services and co-ordination of victims' issues with other related FPT structures.
3. Support Services **3.1 Victim Services**	- Family Violence Prevention Unit - including Department of Justice (federal) Victim Services/Women's Program (six sites). - Long-term counselling, outreach, court support, crisis intervention, VIS, no criminal injuries compensation. - RCMP volunteer Victim Assistance Workers. - Counselling provided for victims and offenders of both sexual and spousal assault.	- One Victim Co-ordinator in Department of Justice GNWT. - GNWT provides funding to community organizations in four communities to provide victim support, information and follow-up. - No criminal injuries compensation. - Victim/Witness Assistance staff operates out of Crown office in Yellowknife and Inuvik.	- Victim/Witness Assistance staff operates out of Crown office.	- RCMP has victim service units that provide information, assistance and referrals in most jurisdictions. Victim service units provide some or all of the following: emotional support, assistance with victim impact statements and other court preparation or accompaniment. - RCMP's National Policy on Victim Services, which includes spousal violence victims, is being revised and expanded. - CSC and NPB have designated Victim Liaison Co-ordinators in all regions to co-ordinate information services to victims of federally incarcerated inmates. - The Victims' Fund, administered by the PCVI provides grants and contributions for innovative projects including new approaches to service delivery, increasing access to services and providing information about existing services and for victims of crime.

POLICY/ PROGRAMS	YUKON	NORTHWEST TERRITORIES	NUNAVUT	CANADA
3.2 Shelters	- Four transition houses. - One women's centre.	- Five shelters, limited number of safe homes and second-stage housing (women usually have to leave small communities to obtain service).	- Six women's shelters. - Social services offer some support. - Some independent societies centred on family violence issues. - Most women have to leave the community to receive service.	- The Shelter Enhancement Initiative under the Canada Mortgage and Housing Corporation (CMHC) provides grants to repair and improve existing shelters for women and children who are victims of family violence. This program was expanded to include shelters and second-stage housing for youth who are victims of family violence. While funding is mainly directed to existing facilities, some funding is available for the creation of new spaces, or acquisition of existing space for use as emergency or second-stage housing. (1996-2002).
3.3 Programs for Children Exposed to Family Violence	- Child Abuse Treatment Service (CATS) may support children exposed to family violence.	- Counselling provided through Family Counselling Centres. - Group support and individual counselling provided to children and youth through the Women's Healing and Recovery Program in Yellowknife. This program is provided by the YWCA and the Yellowknife Women's Centre.		- The Department of Justice (DoJ) funded a needs assessment of intervention models for children who witness violence in the home: "Intervention Models for Children who Witness Violence: A Needs Assessment" (1998). - DoJ also funded the London Family Court Clinic to create a Handbook for Police Trainers to Increase Understanding and improve Community Responses to Children Exposed to Violence. - PCVI funded the development of a Directory of Court Based Services for children and youth who are victims or witnesses in criminal proceedings.
3.4 Abusive Partner Programs	- One court-mandated assaultive husbands treatment program offered through Family Violence Prevention Unit (individual and group); outreach to rural areas. - Sex Offender Risk Management Program.	- None, except as provided for individuals in correctional facilities.	- Program review underway to determine if there is a cultural basis for many corrections based programs including assaultive men's programming.	- CSC has had family violence programs for federal male offenders since 1990 utilizing risk assessment, case supervision and programs to address violence against women. - The national Moderate Intensity Family Violence Prevention Program is a cognitive-behavioural program for moderate risk federal offenders consisting of about 24 group sessions. - The national High Intensity Family Violence

POLICY/ PROGRAMS	YUKON	NORTHWEST TERRITORIES	NUNAVUT	CANADA
				Prevention Program consists of about 75 group sessions and is for high-risk offenders. Both National programs include maintenance and treatment components.
4. New Initiatives (non justice)		- YWCA and Yellowknife Women's Centre. - Women's and Children's Healing and Recovery Program. Includes Assessment and Case Management, Spirit to Change (personal development, life skills, literacy and one-on-one counselling). - Trauma (therapy for women who are dealing with past traumatic issues), Child Recovery (group support and individual counselling for children and youth).	- Establishment of informal men's and women's groups in some communities.	- A new Victims of Crime Policy will soon be released in the Federal Prosecutions Deskbook. - Federal Prosecution Service is currently reviewing is prosecution policy on spousal violence. - The Department of Justice Canada hosted an FPT Forum on Spousal Abuse in March 1998 to discuss and exchange best practices by police, Crown Prosecutors, corrections officials, victim services and policy experts relating to spousal abuse cases. A second FPT Forum was held in March 2001.
5. Reports	- Spousal Assault and Mandatory Charging in the Yukon study.	- Coalition on Family Violence - Family Violence Research Report 2002 (December 2002).		- The National Clearinghouse on Family Violence (NCFV), a federal resource centre operated through the FVI, contains a large number of reports related to spousal abuse. Recent additions to the NCFV include "Canada's Treatment Programs for Men who Abuse their Partners 2002," "Transition Houses and Shelters For Abused Women In Canada" (2002), and "A National Directory of Services and Programs for Men Who are or Have Been Victims of Violence" (2002). - DoJ also commissioned an array of reports related to spousal violence. Recent related reports include "Victim's Experiences with, Expectations and

POLICY/ PROGRAMS	YUKON	NORTHWEST TERRITORIES	NUNAVUT	CANADA
				Perceptions of Restorative Justice" (2000), "Charging and Prosecution Policies in Cases of Spousal Assault: A Synthesis of Research, Academic, and Judicial Responses" (2001) and "The Ontario Rural Women Abuse Study (ORWAS)—Final Report" (2000). - Other federal publications and reports include the following: - fact sheets on the role of victims of crime (NPB) - *An Information Guide to Assist Victims Federal Corrections and Conditional Release* (Solicitor General) - *Family Violence in Aboriginal Communities* (RCMP) - the Canadian Panel on Violence Against Women's final report (1993) - The Sub-Committee on the Status of Women, *The War Against Women: Report of the Standing Committee on Health and Welfare, Social Affairs, Seniors and the Status of Women* (1991). - the Federal Response to The War Against Women (1991) - the Self-Defence Review Panel Final Report (1997)

POLICY/ PROGRAMS	YUKON	NORTHWEST TERRITORIES	NUNAVUT	CANADA
6. Data Collection		- Shelter Program data collected. - Department of Justice, GNWT is working with the Crown and the RCMP to develop a family violence data collection system.		- Under the FVI, Statistics Canada (SC) has released five annual reports entitled *Family Violence in Canada: A Statistical Profile*. These reports covering the years 1998 to 2002 are part of an ongoing initiative to inform the public about family violence issues and provide current data on the nature and extent of family violence incidents in Canada and trends over time. - The 1993 Violence Against Women Survey (VAWS) was a specialized victimization survey measuring self-reported experiences of violence against Canadian women, including experiences of spousal violence. The VAWS is now being used as a model for an international violence against women survey. - The 1999 General Social Survey (GSS) on Victimization included a module on spousal violence which was the first large-scale traditional victimization survey to measure both women's and men's experiences of spousal violence. The spousal violence module will be repeated in the next GSS on Victimization. - The Uniform Crime Reporting (UCR2) Survey collects police-reported incident-based crime statistics from the policing community, including data on the relationship between the accused and the victim. In 2000, 166 police agencies in nine provinces, representing 53% of the national volume of reported crime, were participating in the UCR2. - The Homicide Survey provides police-reported data on the characteristic of all homicide incidents, victims and accused persons, including spousal homicides. - The Transition Home Survey was developed under the FVI in consultation with provincial and territorial governments and transition home associations. The survey collects information on residential services for

POLICY/ PROGRAMS	YUKON	NORTHWEST TERRITORIES	NUNAVUT	CANADA
				abused women and their children. It has been repeated five times since 1992. - SC also produces "Juristat" publications on a variety of issues, such as *Children Witnessing Family Violence* (2001), *Spousal Violence after Marital Separation* (2001) and *National Trends in Intimate Partner Homicides, 1974–2001* (2002). - The FVI, in conjunction with other sponsors, commissioned a report released in May 2002 entitled *Public Attitudes Towards Family Violence: A Syndicated Study*, based on original data from a telephone survey of more than 2,000 Canadians.